

A P P E A R A N C E S

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Information Hearing, Proposed  
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Executive Director's Report

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1 "aye."

2 MULTIPLE SPEAKERS: Aye.

3 CHAIRPERSON PORINI: Opposed?

4 MR. BELTRAMI: No.

5 CHAIRPERSON PORINI: All right. The motion  
6 carries. Thank you.

7 All right. Our next item.

8 MS. HIGASHI: Item 5.

9 MS. SHELTON: This is the proposed statement of  
10 decision on the Peace Officers Procedural Bill of Rights  
11 test claim approved by the Commission in August. The  
12 test claim legislation provides procedural protections  
13 to peace officers employed by local agencies and school  
14 districts when a peace officer is subject to an  
15 interrogation by the employer, is facing punitive  
16 action, or receives an adverse comment in the personnel  
17 file.

18 With one exception, the Commission adopted the  
19 staff analysis of the test claim which recognized the  
20 relationship of the test claim legislation and the  
21 requirements previously imposed on local agencies by the  
22 due process clause.

23 The Commission did change one part of the staff  
24 analysis relating to the taping of the interrogation.  
25 Based on the evidence presented at the hearing, the  
26 Commission found that tape-recording the interrogation  
27 when the employee records the interrogation is a  
28 mandatory activity to ensure that all parties have an

1 accurate record. Thus the proposed statement of  
2 decision includes this activity as part of the  
3 reimbursable state-mandated program.

4 We understand that the claimant would like to  
5 address the Commission today regarding the subsequent  
6 activity of transcribing those tape recordings. I will  
7 be happy to answer any questions after the claimant's  
8 presentation.

9 Will the claimants please state their names for  
10 the record.

11 MS. STONE: Good morning. Pam Stone on behalf  
12 of the City of Sacramento.

13 MS. CONTRERAS: Dee Contreras with the City of  
14 Sacramento.

15 MR. TAKACH: Ed Takach with the City of  
16 Sacramento.

17 CHAIRPERSON PORINI: All right.

18 MS. STONE: Madame Chairman, Members of the  
19 Commission, what we would like to address briefly are  
20 those sections of the analysis and statement of decision  
21 talking about the taping of -- of the interrogation. I  
22 think the reason why we're addressing this is it was  
23 discussed only very briefly at the original hearing on  
24 the test claim that some of the items obviously will be  
25 addressed in the parameters and guidelines more  
26 specifically. But we're concerned that the way that  
27 it's presently phrased could be a little limiting, and  
28 the discussion on this essentially is on pages 220 and

1 30.

2 With that, I'll turn it over to Mr. Ed Takach.

3 MR. TAKACH: The taping of the -- the agency  
4 needs to prepare a complete record of the interrogation,  
5 and going into investigating an officer does not  
6 necessarily mean there will be discipline imposed or  
7 will occur from that.

8 In the instance of the City of Sacramento, it is  
9 the practice that they interview all of their witnesses  
10 or anyone there at an incident before interviewing an  
11 officer that may be the focus of the investigation. And  
12 that could be upwards of 20, sometimes, employees. Many  
13 times it's more than just the accused employee that gets  
14 interviewed.

15 So perhaps the first complete -- the  
16 tape-recording of those conversations has to be done in  
17 the same manner as the accused. He's brought in -- or  
18 she -- told that they're either a subject of this either  
19 as a witness or potentially accused, which can change  
20 directions in the middle of the investigation. Those  
21 are done first.

22 The accused employee is then interviewed. Then  
23 there may be subsequent interviews of additional  
24 witnesses, or the accused employee himself or herself  
25 may be interviewed on a second occasion.

26 As statute states, they're entitled to  
27 transcriptions or copies of notes and interviews already  
28 what's provided in the statute. We have to have a clear

1 record and later transcribe those, many times before  
2 getting back to interviewing the accused officer on the  
3 second occasion. So transcripts have to be done prior  
4 to the second interview and prior to completion of any  
5 kind of disciplinary package or going forward with  
6 discipline.

7 MS. CONTRERAS: Well, let me add -- Dee  
8 Contreras. As a practical matter, in safety  
9 investigations most of the time most of the witnesses  
10 are also safety, so we're talking about peace officers.  
11 Typically when you're doing an investigation of a police  
12 officer, you are also interrogating other police  
13 officers who are witnesses, have information about, or  
14 bring information forward relative to the case. In many  
15 cases, those people subsequently become people who are  
16 being interrogated for the possibility of discipline.  
17 Their role can change based on what the first employee  
18 says.

19 So we have to take -- give them the same  
20 protections as they're going through the process as a  
21 witness that we would if they were going through the  
22 process as the employee we're targeting basically to do  
23 an investigation for discipline because of the  
24 protections of POBAR. In a normal situation you could  
25 treat them somewhat differently, but we can't in this  
26 context.

27 In addition, any time we reinterrogate somebody  
28 who has become the person we're looking at for

1 disciplinary purposes, we have to provide -- and you  
2 agreed that the taping of the initial case had to be  
3 provided to them.

4         However, that's in many cases meaningless unless  
5 you provide a transcription of it. If you've ever  
6 listened to tape recordings of an interview process, in  
7 order to respond to it intelligently -- and I'm assuming  
8 the law intends for these officers to have the  
9 opportunity to know what they said at the first meeting  
10 and respond to it intelligently. You have to have a  
11 written document to respond from. You can't sit in an  
12 interview and play back pieces of tapes back and forth  
13 in order to know what you said the first time to  
14 something the second time around. What you have to be  
15 able to do is reference what the document says you said  
16 and respond to that or testify or answer the question,  
17 expand on your answer or give a different interpretation  
18 of the answer, however -- whatever the question happens  
19 to be.

20         But the tape itself is not useful in that second  
21 interview process in and of itself. It has to be  
22 transcribed in order to do that. Since it's our tape  
23 that we are -- we are preparing as the record for final  
24 disposition of this case in a disciplinary arena, we  
25 have to transcribe it.

26         If you've ever transcribed tapes, you know what  
27 it's like to do that. There are nuances of listening in  
28 the way questions that are asked that can take an

1 enormous amount of time as a practical matter to get.  
2 And then you have people who talk fast like me, and when  
3 they're trying to transcribe the tape they -- they wind  
4 up going back over and over again in order to get it  
5 clear so that you have a complete record.

6 So that -- it's essential to also transcribe  
7 that material back for the employee who is being  
8 interrogated the second time, and that is true whether  
9 the person comes to us as a police officer who's a  
10 witness and is being interrogated a second time, which  
11 is not an uncommon event, or whether it's a peace  
12 officer coming to us as the -- as the person we have --  
13 we are specifically investigating and believe has  
14 committed some violation for which discipline will flow.

15 So our concern here is that the language needs  
16 to be broad enough to include that, the taping of other  
17 peace officer witnesses who may be involved in the  
18 investigation, because those are the ones who we are  
19 required to this with. If it's a civilian employee,  
20 whether we do by practice or not tape-record them, this  
21 act does not require that taping.

22 It does require that taping, from our  
23 perspective, of all safety officers who are interviewed  
24 because anybody who comes into an internal affairs case  
25 and starts answering questions is obviously subject,  
26 based on their answers, to being disciplined as a result  
27 of what they've said in this process. The information  
28 they give can lead to consequences for them, even though

1 they weren't the person who we were looking for in the  
2 first place. Based on, among other things -- and I  
3 think it's paramount that you have to look at it from a  
4 peace officer perspective, the failure to report  
5 inappropriate behavior is in and of itself a  
6 disciplinable offense, much like the honor code at the  
7 military academies.

8           If a witness comes in and I say, "Yes, well, I  
9 did see Ed do what he did," but then they say, "Why  
10 didn't you report it," and I say, "Well, I didn't think  
11 it was too important" or whatever my reason is, I then  
12 have -- am now in a discipline mode also in fact. And  
13 that does occur. It occurs not infrequently to people  
14 that identify actions which could result in their own  
15 disciplinary action.

16           So we want to make sure that whatever comes out  
17 of this is broad enough to recognize the taping is any  
18 sworn person who comes into an interview, into an  
19 interrogation investigation process and that the  
20 transcription of those tapes or subsequent interview  
21 needs to be included in the meaningful use of giving a  
22 person the tape. If I give you a tape and then I  
23 reinterview you, it's not very helpful to have you sit  
24 there and replay the whole tape every time I'm asking  
25 you something so we can discuss the nuances of this  
26 answer to that answer. Does that make sense?

27           MS. STONE: So briefly in summary our concern is  
28 that -- using just, for example, the conclusion on

1 page 30 -- I think that's the easiest place to start --  
2 5A we think is a little bit narrow. What we're  
3 concerned about is the third-party witness who is taped  
4 who is a sworn officer who may or may not be the  
5 original target of the investigation and then the  
6 transcription of those tapes.

7 And I know that this was not discussed at the  
8 original hearing, and we apologize profusely, but this  
9 is an issue we believe should be raised at this point in  
10 time for clarification prior to the preparation of  
11 parameters and guidelines.

12 And we'd be happy to answer any questions.

13 MS. CONTRERAS: I carefully avoided the use of  
14 the word "target." I struggled several times to avoid  
15 using "target."

16 CHAIRPERSON PORINI: All right. Comments from  
17 members?

18 MR. SHERWOOD: I wonder if staff has any comment  
19 on this.

20 CHAIRPERSON PORINI: All right. Camille.

21 MS. SHELTON: A couple of things. First, let me  
22 just -- to understand your position, are you wanting  
23 reimbursement for transcribing the tapes only when  
24 there's a further interrogation and not if there's a  
25 further proceeding that constitutes a disciplinary  
26 action? That would fall under due processing?

27 MS. CONTRERAS: Yes. Yes. We would  
28 transcribe -- for purposes of discipline, obviously we



1 have to give them documentation on which we base the  
2 discipline at the point at which we implement discipline  
3 for anything above -- anything above in the City of  
4 Sacramento a suspension or above. We don't provide  
5 Skelly material for letters of reprimand. So it would  
6 include anything relative to letters of reprimand that  
7 we have to give them under this and for reinterview  
8 processes.

9 MS. SHELTON: Okay. Let me just tell you what  
10 the statute says and what the analysis does. I'm not  
11 sure that they -- I don't think the analysis is  
12 necessarily inconsistent with what they may or may not  
13 be wanting as an activity.

14 If you turn to page 19, the statute does not  
15 discuss providing transcripts at all. All it says is if  
16 a tape recording is made of the interrogation, the  
17 public safety officer shall have access to the tape if  
18 further proceedings are contemplated or requires any  
19 further interrogation at a subsequent time.

20 The second part of the -- or the third part of  
21 the statute actually is on page 21, and it says that the  
22 officer shall be entitled to a transcribed copy of any  
23 interrogation notes made by a stenographer, okay. So  
24 what they're asking for is something beyond what the  
25 statute says. And it was not discussed at the test  
26 claim hearing. However, the Commission's regulations do  
27 allow the Commission to include as a reimbursable  
28 activity any activity that is reasonably necessary to

1 comply with the mandate.

2 At this point the Commission can -- has options.  
3 They can decide this issue now and we can include it in  
4 the statement of decision, or you can postpone this  
5 issue for the parameters and guidelines phase because as  
6 written I don't think it conflicts necessarily with  
7 their request, if the Commission decides to approve  
8 that.

9 CHAIRPERSON PORINI: All right. Comments from  
10 members?

11 MS. SHELTON: One more thing, too. The statute  
12 also does not specifically or expressly identify sworn  
13 witnesses. Again, that would be something that would  
14 fall under the Commission's regulations if you want to  
15 include that as part of the reimbursable activity.

16 CHAIRPERSON PORINI: Well, I'm glad that you  
17 provided that clarification, Camille, because I was  
18 taken by Ms. Contreras' testimony at the last hearing  
19 and, in fact, looked specifically at that issue on Bates  
20 page 51 where you make it clear that, you know -- let's  
21 see. You say if an employee comes in and tapes -- and  
22 trust me, they all come in and tape. They're sworn  
23 peace officers. Their attorneys come in with tapes.  
24 You might end up with two tape recorders on the desk.  
25 We went through that whole discussion.

26 MS. CONTRERAS: Correct.

27 CHAIRPERSON PORINI: But what it really relates  
28 back to is notes and providing copies of notes that

1 they're taking, and you're clear in your testimony  
2 there. So I'm a little concerned about expanding to  
3 transcriptions of everything.

4 MS. SHELTON: One note, just for what the issue  
5 on the proposed item is, does it accurately reflect the  
6 Commission's decisions. In other words, again, you  
7 still have the option of deciding today, but you can put  
8 the issue off until the parameters and guidelines are  
9 out.

10 CHAIRPERSON PORINI: Ms. Steinmeier.

11 MS. STEINMEIER: My preference is to move this  
12 on today and to deal with these -- these actual  
13 activities in the parameters and guidelines, making a  
14 mental note that we've at least discussed it today and  
15 you'll have another opportunity to plead it one more  
16 time to us. That's what I would prefer to do.

17 CHAIRPERSON PORINI: All right. What's the  
18 desire of --

19 MR. SHERWOOD: I'll agree with that.

20 CHAIRPERSON PORINI: Okay. Do you need a motion  
21 or would you like us to --

22 MS. HIGASHI: We need a motion to adopt the  
23 statement of decision.

24 MS. STEINMEIER: So moved.

25 CHAIRPERSON PORINI: All right. We have a  
26 motion.

27 MR. FOULKES: Second.

28 CHAIRPERSON PORINI: And we have a second. All

1 those in favor, indicate with "aye."

2 MULTIPLE SPEAKERS: Aye.

3 CHAIRPERSON PORINI: Opposed?

4 (No audible response.)

5 CHAIRPERSON PORINI: All right.

6 MS. CONTRERAS: Thank you very much.

7 MS. STONE: Thank you so very much.

8 MS. HIGASHI: This brings us to Item 8. This is

9 a -- what I really describe as a housekeeping issue.

10 It's regarding the scheduling or assignment of a pending  
11 test claim resulting from tie vote.

12 In September, the Commission on State Mandates  
13 heard the test claim on the behavioral intervention  
14 plans. You may recall the Commission voted on a motion  
15 to deny the test claim. The motion failed by a  
16 three-three vote.

17 Although the Commission has adopted regulations  
18 on tie votes, these regulations are inapplicable to this  
19 claim. Generally the test claim may be rescheduled for  
20 hearing by the Commission or the chairperson may assign  
21 the test claim to a hearing officer for preparation of  
22 the proposed statement of decision.

23 Staff requests that the Commission give us some  
24 guidance as to how you would like us to schedule or act  
25 upon this matter.

26 CHAIRPERSON PORINI: All right. Comments from  
27 members?

28 Let me ask about our policies, Paula or Pat. If

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.  
DATE: July 27, 2000  
PLACE: State Capitol, Room 126

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

STACEY L. HEFFERNAN CSR, RPR  
No. 10750

1 MR. CUNNINGHAM: Thank you.

2 MR. BELTRAMI: Madam Chair, would it be appropriate  
3 at this time to consider the sole issue of training in the  
4 future or from this point on or --

5 MS. HIGASHI: What I will offer to do is convene a  
6 workshop or a meeting with the claimants' representatives and  
7 with the State Controller's Office representatives so we can  
8 talk about a solution that we might propose and can bring it  
9 back to you.

10 CHAIRPERSON PORINI: Okay. Thank you.

11 MS. HIGASHI: This brings us to another easy item,  
12 Item 10. This item will be presented by Ms. Shelton.

13 MS. SHELTON: Item 10 is the proposed parameters and  
14 guidelines on the Peace Officers Procedural Bill of Rights  
15 Program, otherwise known as POBAR. "The test claim  
16 legislation provides procedural protections to peace officers  
17 employed by local agencies and school districts when a peace  
18 officer is subject to interrogation, is facing punitive  
19 action or receives an adverse comment.

20 "Staff has made several modifications to the  
21 claimant's proposed parameters and guidelines to conform the  
22 parameters and guidelines to the Commissions' Statement of  
23 Decision.

24 "The main issues in dispute involve reimbursement of  
25 court costs supporting the agency's final administrative  
26 decision issuing a disciplinary action, and the court costs  
27 in defending claims filed under Government Code section  
28 3309.5. For the reasons stated in the executive summary,

1 staff disagrees with these requests for reimbursement and  
2 recommends that the Commission adopt the parameters and  
3 guidelines modified by staff beginning on page 21."

4 Will the parties please state their names for the  
5 record.

6 MR. TAKACH: Edward Takach, Labor Relations Officer  
7 for the City of Sacramento.

8 MS. STONE: Pam Stone on behalf of the City of  
9 Sacramento.

10 MS. CONTRERAS: Dee Contreras, Director of Labor  
11 Relations for the City of Sacramento.

12 MR. BURDICK: And Allen Burdick, SB 90 service.

13 MR. HUISH: Steve Huish, Vice President of the  
14 Sacramento Police Officers' Association. I'm representing  
15 PORAC (phonetic).

16 MR. LOMBARD: Jim Lombard, Department of Finance.

17 CHAIRPERSON PORINI: All right. Ms. Stone.

18 MS. STONE: Good morning -- good afternoon. We do  
19 appreciate the work that staff has done with respect to this  
20 draft staff analysis and what we would like to focus on is  
21 the issue of court costs under 3309.5.

22 First of all, I think it's important to note that  
23 your staff indicates that because, in essence, this  
24 particular activity, defensive litigation over -- pursuant to  
25 3309.5, is not specifically mentioned in the statement of  
26 decision it cannot form the basis for reimbursable activity  
27 in the parameters and guidelines.

28 And I would like to point out some issues to the

1 Commission as to why we disagree and why we think this is bad  
2 policy. This particular test claim was filed in December of  
3 1994. At that particular point in time, there was a much  
4 different attitude towards the filing of test claims and the  
5 presentation of test claims and the difference in the  
6 function between a test claim and a filing of parameters and  
7 guidelines.

8 At that point in time the attitude was when you file  
9 a test claim you were taking a look to see what the actual  
10 scope of the mandate is and whether or not you have a program  
11 that is eligible for reimbursement as a reimbursable mandated  
12 program.

13 So, therefore, what you would focus on would be the  
14 elements of this program versus what activities were required  
15 under the prior law. If your Commission examines your own  
16 regulations, 1183, subsections (e) through (h), specify what  
17 must be in a test claim for it to be considered.

18 It is required that the written narrative specify,  
19 under subsection (3)(a), what activities -- what specific  
20 activities were required under prior law or executive order,  
21 and subsection (b) says what new program or higher level of  
22 service is required. There's no requirement in the test  
23 claim filing that there be a specification of each and every  
24 activity that constitutes the new program or higher level of  
25 service.

26 It has always been my understanding that when you  
27 have the issue of the statement of decision, you are  
28 describing what the program is that is reimbursable versus



1 what activities are specifically not reimbursable as they  
2 were a function of prior law, as they are a function of  
3 federal law or regulation, and that you take a look at what  
4 specific activities are to be reimbursed when you get to the  
5 issue of the development of parameters and guidelines.

6 This is the point in time when we take a look at the  
7 actual program since the scope of the mandate has been  
8 defined as a result of the statement of decision. So you  
9 take a look at the statement of decision as being that which  
10 defines what the scope of the mandate is and then you go to  
11 the actual elements and activities that are reimbursable  
12 through the development of the parameters and guidelines.

13 Your staff has said that your regulations, 1183.1,  
14 speaks in terms of the activities found to be required. Yes.  
15 One of the subsections says that the activities found to be  
16 required under the statutes or executive orders that contain  
17 the mandate or increased level of service.

18 Two things are missing from your regulations: One  
19 is fund by whom and the second is found when. There's no  
20 requirement in your regulations that for an activity to be  
21 included in the parameters and guidelines it must be  
22 specifically included in the statement of decision.  
23 Otherwise, you are caught in a catch-22. Your regulations  
24 would preclude reconsideration of your decision to include  
25 the activity in the statement of decision and, yet, you could  
26 not amend the parameters and guidelines to include the  
27 specific activity because it was not mentioned in the  
28 statement of decision.

1           It seems to me that this particular point in time is  
2 the perfect time to examine the nature and extent to which  
3 legal costs occasioned by 3309.5 are reimbursable at the time  
4 of the initial consideration of the parameters and  
5 guidelines. I think it's really important to keep in mind  
6 that as the Commission has developed and regulations have  
7 been adopted since the initial founding of the Commission in  
8 1985, as I believe Ms. Halsey has mentioned, we have gone to  
9 a much more legalistic, much more detailed analysis.

10           I mean, that has been part of the problems that have  
11 been presented to your Commission today, whether or not  
12 training should have been or was implicit in the P's and G's,  
13 how test claims were filed six years ago. This is another  
14 situation as it reflects the changing dynamics of the  
15 Commission and the manner in which things are examined.

16           So what we are requesting is that attorneys' fees  
17 occasioned by 3309.5, not the issue, I think, that staff  
18 mentioned of all administrative review of the disciplinary  
19 actions, that falls, to a large extent, within Skelly.  
20 Skelly is not part of this test claim. This test claim is  
21 the penumbra around Skelly. So I would like Ms. Contreras to  
22 address the issue of the legal defense necessitated by  
23 POBAR.

24           CHAIRPERSON PORINI: Ms. Contreras?

25           MS. CONTRERAS: Yes. Well, seeing from the rest of  
26 your work this morning how very important it is that the P's  
27 and G's reflect everything that might possibly arise in the  
28 future, I'm sorry I didn't prepare more carefully for this

1 argument this morning. Let me say, as Pam has pointed out,  
2 we're not talking about litigation of a completed civil  
3 service case where they have a right to a writ of appeal on  
4 that. That derives out of our own civil service rules and  
5 our own process. This has nothing to do with a mandate  
6 created by POBAR.

7 But there are many other situations in which POBAR  
8 has created litigation potential so that it becomes a threat  
9 that we have to deal with, in terms of resolving problems and  
10 actual litigation over issues which the employee would never  
11 had had and access to the courts absent POBAR.

12 As a practical matter, punitive transfer, as an  
13 example, does not exist in the City of Sacramento under our  
14 civil service rules. The management has the right to  
15 transfer. The collective bargaining agreement has specific  
16 language regarding management's ability to transfer for due  
17 process. If a person disagrees with that, they have a  
18 grievance procedure which is binding, with binding  
19 arbitration of the issues regarding the collective bargaining  
20 agreement, and yet, not have we theoretically -- but we've  
21 actually been sued regarding seeking to move a person from a  
22 particular assignment.

23 We've been threatened with litigation when we  
24 attempted, based on budget closures, to close down a whole  
25 unit of employees, and, in fact, wound up paying people six  
26 months additional pay after we've taken them out of the paid  
27 assignment, because, if we didn't do that, we would have  
28 been sued in order to -- under POBAR, under the allegation

1 that even shutting down a unit based on fiscal issues is a  
2 punitive transfer.

3 When the law was passed, nobody knew what a punitive  
4 transfer was, and I'm not sure everybody knows today, but  
5 we're very certain that they can exist in a lot of places  
6 that nobody had ever thought about at the time this law was  
7 passed. We have no civil service action equivalent to a  
8 punitive transfer.

9 So I can't give you a Skelly letter that says, "I  
10 intend to punitively transfer you. I intend to transfer you  
11 as a result of discipline." And, yet, in fact, based on case  
12 law caused by POBAR, we are required to do that. If we  
13 don't, we will get sued because we failed to go through a  
14 process that does not legally exist in our civil service  
15 rules but it is mandated by POBAR.

16 So the mandate arises in a variety of directions.  
17 It supersedes our collective bargaining agreement. It causes  
18 litigation issues that could not exist but for it.

19 The concept of stigmatizing an employee or their  
20 career, their promotability or the transferability, again,  
21 doesn't exist in a common law remedy, except for defamation  
22 or some process, but it's not, in any way, resolvable given  
23 management's inherent ability to transfer, reassign, move,  
24 assign work and otherwise assign employees except for limits  
25 generated by the collective bargaining agreement; and, yet  
26 every time you seek to move somebody, even consistent with  
27 the collective bargaining agreement, litigation issues can  
28 arise. The issue of -- anything that causes a decrease in

1 money is considered to be punitive.

2 As an example, we have a provision in our collective  
3 bargaining agreement that assigns detective pay if you work  
4 in investigations as a detective, logically enough, and the  
5 collective bargaining agreement specifically says this is  
6 assignment pay and it's not subject to POBAR, so removing  
7 detective pay, when somebody leaves the unit, is not subject  
8 to POBAR.

9 We have been threatened with and sued regarding that  
10 issue. In a recent discipline case, we've moved people from  
11 their assignment, because the assignment they were in  
12 pending, in the investigation -- we could have put them on  
13 administrative leave. Personally, I would assume that would  
14 be more stigmatizing than anything. We didn't do that. We  
15 simply moved them to a less vulnerable place while the  
16 investigation was carried on. We had to go to court to  
17 discuss whether or not we could do that.

18 We have been to court about whether we could take  
19 take-home vehicles away from people at various times, even  
20 though a take-home vehicle is, obviously -- or would seem  
21 logically enough from an employer's perspective, not to be  
22 the kind of thing that a person accrues a right to when  
23 they're removed from the assignment. So the issues  
24 surrounding litigation are very broad and they are  
25 fundamental to management's right to operate, to assign, to  
26 reassign, and to move people.

27 The fact that when this law was passed, the range of  
28 behavior anticipated to be controlled in employers was

1 outrageous behavior and outrageous abuse of employees. It  
2 has become a vehicle for attacking management's ability to  
3 manage, to assign, to resign, to deploy forces and materials  
4 on an ongoing basis.

5         The obvious issues around litigation arise in terms  
6 of non-tenured employees, and the staff has addressed those  
7 issues relative to the appeal rights that accrue. Obviously,  
8 those people wouldn't have any right to court after they get  
9 through exhausting whatever appeal rights they've never had  
10 before, absent POBAR. So another gift to local government  
11 for probationary and at-will employees.

12         If it's not -- the reality is -- and, if you look at  
13 the history of POBAR, what it means is that it has been  
14 expanded enormously to create more rights, greater rights,  
15 and rights from different directions that existed at the time  
16 of this past. The courts -- the fact of the courts'  
17 continuous expansion of these rights makes clear that the  
18 ongoing litigation regarding it is a problem and it's a  
19 burden that local government continues to bear. And those  
20 expansions are not related to rights that exist in other  
21 arenas or based on other legislation or other activities.  
22 They come straight out of POBAR and are directly related to  
23 its impact in the daily workforce.

24         I think my recollection is that we talked about some  
25 of this at the last hearing. Certainly, we've had  
26 discussions regarding the staff. So I think, from our  
27 prospective, it was inherent, throughout this process, that  
28 this was one more of the pieces of the burden.

1           It's not one that occurs with enormous frequency,  
2 but, when it does occur, it is costly. It takes a lot of  
3 time. And, frankly, it often does a lot of damage to the  
4 organization. So it's something that, from our perspective,  
5 is really critical that it be included in your parameters and  
6 guidelines in terms of resolutions of this.

7           MS. STONE: In conclusion, we'd like to point out  
8 that section 3309.5 was included in the test claim. There's  
9 no issue about it being in some statute that was not  
10 alleged. I believe that the record does reflect that the  
11 litigation aspects were discussed at the time the initial  
12 statement of decision -- the initial test claim was heard and  
13 it has been something that has been discussed throughout.

14           So, the fact that it is not a one-liner in the  
15 statement of decision, this is not an issue that is coming  
16 from left field. It has been discussed. It was discussed by  
17 Ms. Contreras at the last meeting. And we respectfully  
18 request that the element of costs, with regard to 3309.5, be  
19 included in the parameters and guidelines.

20           CHAIRPERSON PORINI: All right. Mr. Lombard.

21           MR. LOMBARD: Jim Lombard, Department of Finance.  
22 We would note that we made, in January, two concerns related  
23 to the parameters and guidelines and the Commission staff  
24 have addressed both our concerns and we concur with the  
25 Commission's analysis.

26           CHAIRPERSON PORINI: All right. Questions from  
27 members? Clarification, Camille?

28           MS. SHELTON: Basically, just on page 3, and,

1 getting into the staff analysis, we did try to clarify what  
2 is required of a claimant for filing a test claim relating to  
3 a statute. And the constitution, Article XIII(b), requires  
4 that in order for reimbursement to come from the state there  
5 has to be a finding of a new program or a higher level of  
6 service.

7           The implementing legislation in Government Code  
8 section 17514 also requires that there has to be a finding  
9 under our costs mandated by the state. These are test claim  
10 issues. So there has never been a finding by the Commission  
11 that 3309.5 constitutes a reimbursable state mandated  
12 statute.

13           I agree that the Commission's regulations do allow  
14 the Commission to include other activities in the parameters  
15 and guidelines that were not specifically stated in either  
16 the statement of decision or in the statutes in question.  
17 We've done that in these parameters and guidelines.

18           For example, the first part was allowing  
19 reimbursement for all the administrative activities including  
20 ongoing activities with the recognition that there are a lot  
21 of court cases and litigation going on, so that we agree that  
22 it is reasonable for claimants to be reimbursed for ongoing  
23 training, for ongoing changes to their policies and  
24 procedures, to reflect those changes in the law.

25           Those types of cases or activities stem directly  
26 from the statutes in question. This is a whole other  
27 statute, which, I agree, that wasn't included in the POBAR  
28 legislation, but there was never an analysis, as required by



1 the Commission's regulations, that that statute constitutes a  
2 new program or higher level of service.

3 A staff member analyzed it and there has never been  
4 a statement from the claimants noting an omission in our  
5 staff analysis or in the statement of decision. You know,  
6 we're not proposing to -- we have not analyzed the substance  
7 of 3309.5, so they haven't given you a recommendation on  
8 that; that would be up to the Commission.

9 If the Commission wants to include legal defense  
10 costs, under 3309.5, I believe the only way you can do that  
11 is to find that the legal defense costs are reasonably  
12 related to the 3304 subdivision (b), administrative appeal.  
13 I would note, though, that 3309.5 applies to all of the POBAR  
14 action, not just the administrative appeal. It kind of seems  
15 to me, from Ms. Contreras' testimony, that most of the cases  
16 center around the punitive actions and so her argument, I  
17 would assume it to be, is that it's logical to put it there.

18 So, certainly, the Commission can move in that  
19 direction.

20 CHAIRPERSON PORINI: Other questions from members?

21 MR. HUIH: I have a statement. Yeah, representing  
22 the Police Officers' Association and PORAC, we came into this  
23 a little bit late. We are both against any reimbursement to  
24 the city for any type of P.O.B.R. activities. P.O.B.R. bars  
25 the agency from violating the officers' rights. We don't  
26 think that they should be able to be reimbursed for that  
27 activity. That's basically it.

28 CHAIRPERSON PORINI: All right. So you support

1 staff's recommendation?

2 MR. HUIISH: Yeah.

3 CHAIRPERSON PORINI: All right. Mr. Burdick?

4 MR. BURDICK: Madam Chair and members, Allan  
5 Burdick. Maybe I can just simplify this a little bit, I  
6 think, of what the argument is and how we see it and how they  
7 see it without talking about all the sections.

8 Essentially, I think, what staff's proposal is, as  
9 we would see it, you would actually develop parameters and  
10 guidelines as part of your test claim, because you would want  
11 to include all of those activities as part of the discussion  
12 at the initial session.

13 How we see this particular activity is that if we  
14 hadn't had POBAR, we would not have any of these lawsuits.  
15 And so what we're looking at is: You have, now, new actions  
16 that an officer can take against the city because of the  
17 statute that grew out of this program, and it's only those  
18 activities that we want to seek reimbursement for.

19 So, for example, if the Commission members out  
20 there, if you were -- if a suit was filed against you for  
21 your action serving on this Commission, then it would be  
22 directly related to the fact that you are a commissioner on  
23 the Commission on State Mandates; it would not be related to  
24 the fact that you're probably a state employee. If there was  
25 an action taken against you because you did something that  
26 falls on absenteeism or whatever, that would fall under  
27 regular state statute and personnel rules.

28 I think that's kind of what he's saying is that

1 there are those things which come under your regular  
2 personnel rules for all employees, and those things are not  
3 types of things that we're saying we should be reimbursed for  
4 court activities; but where something is directly related  
5 to -- came out of it and is only the basis of that claim, it  
6 only exists because of this new mandate that you've agreed  
7 that the mandated activities are mandates, that we should be  
8 entitled, then, to reimbursement for the costs of those  
9 programs.

10 So that's what I'm trying to do is separate out and  
11 say there's a whole group of things of activities that are  
12 currently rights of employees under Skelly, under other  
13 personnel rules, which would not be covered under this; but,  
14 for those things that are unique to the fact that they are  
15 claiming they had a right, because of this POBAR statute now,  
16 and we are alleging that the city or the county did not,  
17 therefore, follow those rules, or they, then, are going to  
18 file an action based on that, we're saying, in that case, we  
19 have -- you know, the city or county has no option except  
20 to -- if a lawsuit is filed by an officer, except to defend  
21 itself against that officer on that allegation, and they  
22 should be paid for the cost, even if it just simply means  
23 writing a letter and responding to them and maybe agreeing  
24 with them, but that would be part of the litigation process.

25 CHAIRPERSON PORINI: Ms. Shelton?

26 MS. SHELTON: The arguments that Mr. Burdick has are  
27 relevant in a test claim hearing. Those are relevant to  
28 determine whether a statute constitutes a new program or

1 higher level of service. We haven't even reached those  
2 issues because, procedurally, the Commission has never made a  
3 finding on that at the test claim phase. I'm not going to  
4 get into the substance unless the Commission would like that  
5 to happen.

6 CHAIRPERSON PORINI: Other comments or questions?

7 MR. BELTRAMI: Mr. Burdick, can't almost anyone from  
8 the action that we take lead to a lawsuit?

9 MR. BURDICK: That's what we're saying; they could.

10 MR. BELTRAMI: Every issue we take up now, we're  
11 going to have to tack on -- we've been starting to tack on  
12 things. People are saying, well, what about redirected time  
13 of employees --

14 MS. STONE: Excuse me, Mr. Beltrami. This  
15 particular statute --

16 MR. BELTRAMI: Would you let me finish, please.

17 CHAIRPERSON PORINI: Ms. Stone, please.

18 MR. BELTRAMI: And now we're going to tack on a  
19 lawsuit possibility.

20 Isn't there a lawsuit possibility in almost  
21 everything we do in life?

22 MR. BURDICK: This is different because the right is  
23 given in POBAR. The statute that you found the mandate  
24 includes giving the authority to an officer to file an action  
25 on that particular case, so that was part of the test claim.  
26 What we look at --

27 MR. BELTRAMI: That wasn't in the statute. Would  
28 you not be permitted to find a lawyer down the street who

1 would file a lawsuit, then?

2 MR. BURDICK: I mean, I don't know, legally, as an  
3 attorney, whether you'd have to write an action against them  
4 or not, but this statute, specifically, gives them the right  
5 to do that. In the legislation that outlines the  
6 Commission's rights, it indicates in there that if we wanted  
7 to take action against the Commission, how you do that, where  
8 you do that, when and under what conditions. And, so, if  
9 that happens to be the case -- all I'm just saying is where  
10 in the statute it specifies and gives the rights. In those  
11 kinds of cases, we believe there should be reimbursement.

12 In those cases where it is not related,  
13 specifically, to this issue where a law enforcement officer  
14 feels -- let's say it's a sexual harassment case, obviously,  
15 that would not be covered. It has to be directly related to  
16 the specific activities under POBAR, because, in that  
17 statute, it gives that officer the right, then, to file an  
18 action against the city.

19 And we're saying that the city has the obligation to  
20 defend itself, just like we would say that if an action was  
21 filed against the Commission, the staff would have the right,  
22 in terms of spending staff time on that activity, because of  
23 the fact that that's part of the Commission activity; that's  
24 directly related to it.

25 And that's all we're saying is that this action is  
26 directly related to part of that program, and it's not  
27 separate and unique. As I say, there's not going to be a lot  
28 of these cases as it relates to them. I mean, Ms. Contreras

1 has mentioned it a few times that it happened in the large  
2 City of Sacramento, but I would say that, in general, these  
3 are the kinds of things that do not happen frequently.  
4 They're not a rule of thumb in most cities and counties in  
5 California. In the larger jurisdictions, you're liable to  
6 find these actions are more likely to happen.

7 MS. CONTRERAS: Can I add something to that?

8 Generally speaking, there is no common law right for  
9 an employee to have a right to an assignment, a job or a  
10 task, so, no, an employee can't -- if you work anyplace and  
11 you have an employee and I say, "You, go take this case and  
12 do that work over at that desk," if it's in your  
13 classification, you can't say, "I don't want to do that. I'm  
14 going to go sue you because I think that's a rotten  
15 assignment. I'm going to do something about it."

16 So the fundamental answer to that question is no,  
17 but POBAR, specifically, on its face, says -- and the  
18 employee has the right to take these issues directly to  
19 court. Don't pass go. Don't collect \$200. Sue them. So it  
20 creates an opportunity that, in fact, doesn't exist.

21 And if you believe your employer has the issue about  
22 stigmatizing an employee, for example, an employee can sue  
23 for defamation as anybody can, but defamation has a  
24 relatively high standard of proof. It doesn't come because  
25 you think your supervisor doesn't like you. It doesn't come  
26 because you don't like your supervisor.

27 So, as a practical matter, this creates a whole  
28 additional obligation. And I am flipping now through my

1 testimony, the first time I appeared here for the test claim.  
2 I did talk about litigation. I didn't identify it as a  
3 specific issue, but, in several places, I talked about the  
4 fact that we are exposed to litigation and we've been  
5 involved in litigation on these issues. So I think whether  
6 we artfully stated it at that time or not, it's clear that we  
7 recognized and presented to you the reality that litigation  
8 of these issues does exist and that we can be sued in ways  
9 that would not be possible for any other employee.

10 If I transfer you to another building, another room,  
11 another office, you can't go down to the courthouse and file  
12 a lawsuit getting that turned over. In fact, you have no  
13 remedy. You know, your remedy is: That's part of  
14 employment. You know, you have a lot of opportunities out  
15 there. Perhaps you want to work for somebody else.

16 Even with a collective bargaining agreement -- I  
17 mean, in this case, we're not talking about where we do  
18 anything that violates the collective bargaining agreement,  
19 because, typically, we don't, and yet the employee can  
20 litigate the issue. So it's a much higher level of exposure,  
21 from an employer's perspective, than just -- you know,  
22 obviously, if you discriminate against an employee, yes,  
23 there are many actions you can take for which you will be  
24 sued, but they don't arise from something as pointedly  
25 directed as this is relative to individual employees.

26 CHAIRPERSON PORINI: Thank you.

27 Ms. Shelton, did you --

28 MS. SHELTON: Staff agrees that there was a lot of

1 discussion about litigation at the test claim hearing. And,  
2 you know, certainly we had to get into that litigation to  
3 determine how much of this test claim was different than  
4 prior law through Skelly or through the due process clause of  
5 the constitution. So there was a lot of discussion about  
6 litigation.

7           The Commission's regulations just simply require  
8 that a test claimant, in their narrative, provide a  
9 description of how the statute imposes a new program or  
10 higher level of service. Throughout the filings, those  
11 briefs and narratives from the claimant have been limited to  
12 Government Code sections 3303, 3304, 3305, and 3306. There  
13 has never been any analysis, briefing or discussion about  
14 3309.5 until the P's and G's.

15           CHAIRPERSON PORINI: Do the claimants disagree with  
16 that statement? Has there been any analysis of that  
17 particular section?

18           MS. STONE: There has been no request by staff for  
19 analysis. We have gone -- the only time we have taken a look  
20 at 3309.5 is when the parameters and guidelines were filed.  
21 Department of Finance raised the issue. We've had a  
22 prehearing conference on it, so 3309.5 specifically has been  
23 an issue since at least January of this year in regard to the  
24 parameters and guidelines.

25           CHAIRPERSON PORINI: In regard to the parameters and  
26 guidelines but not the test claim.

27           MS. STONE: 3309.5 was not specifically analyzed by  
28 staff, by claimant or the Department of Finance as a separate



1 issue in the test claim.

2 CHAIRPERSON PORINI: Thank you.

3 MR. BURDICK: This takes us back to our basic issue,  
4 you know, where it really discusses, you know, what is the  
5 test claim role and what is the parameters and guidelines. I  
6 mean, we've always seemed to be -- the test claim part is the  
7 general part and gives you the direction over what it is that  
8 the Commission believes contains a general mandate.

9 When you get to parameters and guidelines, that's  
10 where you really begin looking at the details because you may  
11 not get there. You may stop us and deny it. You did it  
12 twice this morning. And so we haven't gotten to the  
13 parameters and guidelines stage to look at all the details.  
14 And that's -- you know, and, essentially, we're almost  
15 arguing that you've got to do your parameters and guidelines  
16 before you do your test claim.

17 And I think it's a basic philosophical difference we  
18 have, in the interpretation with staff, I think, of all local  
19 government -- I think it was presented partially in what was  
20 said by the school district representatives, and I know it is  
21 by the local city and county representatives is that that is  
22 the purpose of parameters and guidelines.

23 It's just like regulations are flushing out what is  
24 in the statute, and that's the same thing with parameters and  
25 guidelines; you flush them out. We've put those out there.  
26 This has been discussed over the last six months. So it's  
27 not like a surprise that's come up or anything else.

28 We've talked about the litigation in the claim. We

1 may not have written anything in the test claim when it was  
2 filed that specifically identified that, but it was  
3 discussed, it was included, it was put in our parameters and  
4 guidelines, and it's been debated. That's how we see the  
5 process working. And we get to the point of all the sudden  
6 saying, well, you didn't include something in your original  
7 test claim. We thought that's the purpose of P's and G's.

8           And I think, as you mentioned, that's why there  
9 needs to be this hearing that Paula is going to convene and  
10 get back to us and decide, and that's why we called them --  
11 you know, it seems that's the purpose of parameters and  
12 guidelines is to get into the details, and that's exactly  
13 what we intended to do.

14           CHAIRPERSON PORINI: All right. Further questions,  
15 comments? Ms. Steinmeier?

16           MS. STEINMEIER: Although I do believe that certain  
17 litigation, within very narrow limits -- and this is the  
18 problem here: They must flow directly from POBAR, because,  
19 prior to POBAR, you still have the right to sue here. The  
20 problem is: We have nothing in actual text where it's been  
21 analyzed, and this is the mind bender today, and you can't  
22 prove something that we're going to do here and have it so  
23 accurate that the Controller's Office will have no doubt  
24 about which ones to pay and which ones not to pay; and that's  
25 my problem with adding that today.

26           I don't know how to do that and staff has not had  
27 the opportunity to actually flush something out, so --

28           MS. CONTRERAS: Typically, litigation for POBAR

1 identifies on its face that it's filed pursuant to --

2 MS. STEINMEIER: It's actually --

3 MS. CONTRERAS: You have to identify how you got  
4 there.

5 MS. STEINMEIER: Yeah, but you can allege something  
6 that wasn't true, too. That happens all the time in  
7 lawsuits. Nice try but somebody could allege it was POBAR  
8 when it was really Skelly or something else, or both.

9 MS. CONTRERAS: We would not allege that the  
10 employees would do such a thing.

11 MS. STEINMEIER: That's not narrow enough for this  
12 Commission. It needs to be far more specific, and,  
13 therefore, our staff has not had the opportunity, and it's  
14 not fair to Camille, to have her draft something on the spot  
15 in the next five minutes. I'm not going to do that to you,  
16 Camille. If there's enough interest on the part of at least  
17 three other commissioners, because we might want to include  
18 this and give time to do it, than that's what I need to do,  
19 but that's only one commissioner's opinion.

20 So where are the rest of you?

21 CHAIRPERSON PORINI: Well, I think I'll say, since  
22 I'm a non-attorney, I was taken by Mr. Burdick's non-attorney  
23 analysis of adopting regulations to implement statutes, and,  
24 unfortunately, having served in the capacity on a variety of  
25 boards and commissions that are forced to adopt regulations  
26 to implement statute, there's the body called Office of  
27 Administrative Law, and if something's not specifically in  
28 the statute, they throw out the regulations, so I feel very

1 uncomfortable adopting something that wasn't part of the test  
2 claim.

3 MR. BURDICK: Can I just respond?

4 MR. BELTRAMI: Madam Chair, why do we need the  
5 parameters and guidelines? Why don't we just use the test  
6 claim?

7 CHAIRPERSON PORINI: Well, I also think we heard, in  
8 one of the earlier arguments, Mr. Beltrami, that the test  
9 claim needs to include all of the specific code sections that  
10 are going to be discussed.

11 MS. STONE: What's included in the test claim -- it  
12 was a specific statute that was alleged in the test claim.  
13 There's no issue that this particular statute was included in  
14 the test claim. That's not the issue. This was --

15 CHAIRPERSON PORINI: I already asked that question  
16 earlier and I was told no.

17 MS. STONE: You asked whether it was analyzed; that  
18 is a different issue. It was included, so it was part of the  
19 test claim.

20 MR. BURDICK: It's part of what we allege.

21 MS. STONE: It's part of the discussion. The  
22 difference being is that nobody, in the discussion, said,  
23 "This discussion refers to 3309.5." What we would like to  
24 see is that this matter be sent to staff to examine the issue  
25 of 3309.5 so this particular provision is narrowly drafted.

26 We agree with Ms. Steinmeier and Ms. Shelton that  
27 this is a very narrow issue. This is why we tried to include  
28 it properly in the parameters and guidelines and we are

1 suggesting that this particular issue be narrowly crafted in  
2 the parameters and guidelines. We're not suggesting that it  
3 be a blanket issue.

4 CHAIRPERSON PORINI: Camille?

5 MS. SHELTON: A couple of things. The first note,  
6 the Commission does not have unlimited discretion of the  
7 parameters and guidelines. You are bound by the  
8 constitution. You're bound by the Government Code sections.  
9 And, at the test claim phase, the constitution and the  
10 Government Code sections say that the Commission has to make  
11 findings relating to a new program or higher level of service  
12 and costs mandated by the state on a particular statute at  
13 the test claim phase; only then can you move on and proceed  
14 to the parameters and guidelines.

15 I will agree that, with the parameters and  
16 guidelines, there are different activities in the parameters  
17 and guidelines than what was discussed at the test claim  
18 phase, but the only difference is that those activities stem  
19 directly from the statutes already determined by the  
20 Commission to impose a reimbursable state mandated program  
21 and are reasonably related, and the Commission's authority  
22 for that is it's own regulation which allow them to expand in  
23 the parameters and guidelines and lists out the different  
24 activities, but they have to stem directly from a statute  
25 that has already been determined by the Commission to impose  
26 a reimbursable state mandated program.

27 If the Commission wants us to take this back and to  
28 draft language to include some type of legal defense costs, I

1 think the Commission would have to make a finding that legal  
2 defense costs are reasonably related to the administrative  
3 appeal under the Commission's regulations. We cannot, now,  
4 take it back to make a determination whether 3309.5  
5 constitutes a new program or higher level of service.

6 MS. STEINMEIER: We'd have to amend our side, is  
7 that correct, or just make a finding today before we --

8 MS. SHELTON: Right. You have to make a finding  
9 that the legal defense costs, however narrowly limited you  
10 wanted to make that, stems from and is reasonably related or  
11 is a reasonable method of complying with the 3304 subdivision  
12 (b) right to an administrative appeal.

13 CHAIRPERSON PORINI: Further comments?

14 MS. STEINMEIER: I don't hear enough interest to  
15 make a motion. If I heard at least three or four of the  
16 others state that, then I would make that motion, but I'm not  
17 going to make that finding and to have staff --

18 MR. BELTRAMI: Well, I'll make the motion.

19 MS. STEINMEIER: You will?

20 MR. BELTRAMI: Yes.

21 MS. STEINMEIER: Well, I'll second it. Let's see if  
22 we can get more interest over here.

23 CHAIRPERSON PORINI: All right. You have a motion  
24 and a second, but I think staff needs to be very clear about  
25 what this motion is.

26 MR. BELTRAMI: We're making a finding that there is  
27 a direct connection on the legal costs, whatever that section  
28 was.

1 CHAIRPERSON PORINI: 3309.5.

2 MR. BELTRAMI: 3309.5 as an adjunct to the rest of  
3 our findings that are --

4 MS. SHELTON: Is your motion -- let me ask you: Is  
5 your motion that legal defense costs, under 3309.5, are  
6 reasonably related under the Commission's regulations to the  
7 activity of the administrative appeal already bound by the  
8 Commission to constitute a reimbursable state mandated  
9 activity?

10 MR. BELTRAMI: 3304 and all the other --

11 MS. SHELTON: Right, I know. I'm sorry. They  
12 included it under the activity of the administrative appeal.

13 So is your motion that the legal defense costs are  
14 reasonably related -- the legal defense costs associated with  
15 a 3309.5 action are reasonably related to the right to  
16 administrative appeal?

17 MR. BELTRAMI: Specifically related, yes.

18 MS. HIGASHI: Reasonably related.

19 MS. HART JORGENSEN: Reasonably related.

20 CHAIRPERSON PORINI: All right. We have a motion  
21 and a second.

22 Is there further discussion?

23 (No Response.)

24 CHAIRPERSON PORINI: Hearing none, may we have role  
25 call.

26 MS. HIGASHI: Mr. Beltrami?

27 MR. BELTRAMI: Yes.

28 MS. HIGASHI: Ms. Halsey?

1 MS. HALSEY: No.  
2 MS. HIGASHI: Mr. Lazar?  
3 MR. LAZAR: No.  
4 MS. HIGASHI: Mr. Sherwood?  
5 MR. SHERWOOD: No.  
6 MS. HIGASHI: Ms. Steinmeier?  
7 MS. STEINMEIER: Aye.  
8 MS. HIGASHI: Ms. Aronberg?  
9 MS. ARONBERG: No.  
10 MS. HIGASHI: Ms. Porini?  
11 CHAIRPERSON PORINI: No.  
12 MS. HIGASHI: Motion fails.  
13 CHAIRPERSON PORINI: All right. Does anyone want to  
14 take a stab at another motion?  
15 MS. STEINMEIER: Yes, I'll move staff's analysis.  
16 MS. HALSEY: I'll second it.  
17 CHAIRPERSON PORINI: All right. I have a motion by  
18 Ms. Steinmeier to adopt staff's recommendation and a second  
19 by Ms. Halsey.  
20 Is there any further discussion?  
21 (No Response.)  
22 CHAIRPERSON PORINI: Hearing none, may we have role  
23 call.  
24 MS. HIGASHI: Ms. Aronberg?  
25 MS. ARONBERG: Aye.  
26 MS. HIGASHI: Mr. Beltrami?  
27 MR. BELTRAMI: No.  
28 MS. HIGASHI: Ms. Halsey?



1 MS. HALSEY: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MR. LAZAR: Aye.

4 MS. HIGASHI: Mr. Sherwood?

5 MR. SHERWOOD: Aye.

6 MS. HIGASHI: Ms. Steinmeier?

7 MS. STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Porini?

9 CHAIRPERSON PORINI: Aye.

10 MS. HIGASHI: Motion carries. Thank you very much.

11 Okay. I have one item of report that since our  
12 last hearing the Commission's Local Claims Bill has been  
13 signed by the governor, so all of the incorrect reduction  
14 claims that needed to be funded and the Open Meetings Act, as  
15 well as the new mandates, have now been approved and the  
16 appropriations are in place for payment.

17 Other than that, I have detail in the executive  
18 director's report about future agendas. I'd like to note  
19 that for the August hearing we will have a very long hearing,  
20 as well, we expect, and what we will do in that case is  
21 knowing how much longer it may probably go is we would like  
22 to set it up so we have a time certain established for a  
23 lunch break so we can all go out to lunch and come back at a  
24 time certain, and we'll put those times in the agenda.

25 I'd also like to remind the public and Commission  
26 members that if you're available today between 3:00 and 5:00,  
27 the Commission staff is hosting an office open house at  
28 980 9th Street, Suite 300. There's a rulemaking --



# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California

July 27, 2000

### 9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Heather Halsey  
Representative of the Director of the Office of Planning and Research  
Member Cindi Aronberg  
Representative of the State Controller  
Member Albert Beltrami  
Public Member  
Member Joann Steinmeier  
School Board Member  
Member John Lazar  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:37 a.m.

### REPORT FROM CLOSED EXECUTIVE SESSION (JUNE 29, 2000 HEARING)

Chairperson Porini reported that, following open session at the June 29, 2000 hearing, the Commission met in closed executive session pursuant to Government Code section 11126 to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation noticed on the public notice and agenda and Government Code sections 11126, subdivision (a), and 17527 to confer upon personnel matters listed on the published notice and agenda.

### APPROVAL OF MINUTES

Item 1 June 29, 2000

This item was postponed.

### PROPOSED CONSENT CALENDAR

#### TEST CLAIMS

Item 5 *Immunization Records - Hepatitis B* - 98-TC-05  
Los Angeles County Office of Education  
Education Code Section 48216  
Health & Safety Code Sections 120325, 120335, 120340, and 120375  
Statutes of 1978, Chapter 325; Statutes of 1979, Chapter 435;  
Statutes of 1982, Chapter 472; Statutes of 1991, Chapter 984;  
Statutes of 1992, Chapter 1300; Statutes of 1994, Chapter 1172;

Statutes of 1995, Chapters 291 and 415; Statutes of 1996, Chapter 1023  
Statutes of 1997, Chapters 855 and 882  
Title 17, California Code of Regulations Sections 6020, 6035, 6040,  
6055, 6065, 6070, and 6075

#### PROPOSED STATEMENTS OF DECISION

- Item 7      *Financial and Compliance Audits*, CSM No. 4498/4498A  
Sweetwater Union High School District and San Diego  
County Office of Education, Co-Claimants  
Education Code Sections 1040, 14501, 14502, 14503, 14504, 14505,  
14506, 14507, 41020, 41020.2, 41020.3, and 41023  
Statutes of 1995, Chapter 476, et al.
- Item 8      *County Treasury Oversight Committees* - 96-365-03  
County of San Bernardino, Claimant  
Government Code Sections 27130 et seq.  
Statutes of 1995, Chapter 784 and Statutes of 1996, Chapter 156
- Item 9      *Gann Limit Calculation*, 97-TC-18  
Alameda County Office of Education, Claimant  
Education Code Sections 1629 and 42132  
Government Code Sections 7901, 7902, 7902.1, 7906-7908, and 7910  
Statutes of 1996, Chapter 1023, et al  
Title 5, California Code of Regulations, Section 58303  
California Department of Education Management Advisories:  
87-04, 88-04, 89-06, 89-08, and 90-06

#### ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

- Item 11      *Not Guilty by Reason of Insanity* - 98-PGA-10 (CSM 2753)  
County of San Bernardino, Requester  
Penal Code Sections 1026 and 1026.5  
Statutes of 1979, Chapter 1114  
Statutes of 1982, Chapter 650

Upon motion by Member Steinmeier and second by Member Beltrami, the consent calendar, consisting of Items 5, 7, 8, 9, and 11, was adopted unanimously.

#### HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

Ms. Higashi swore in all witnesses for the Article 7 hearing en masse.

#### TEST CLAIMS

- Item 2      *Property Tax Administration: Schools* - CSM-4473-a  
County of San Bernardino, Claimant  
Revenue and Taxation Code Section 97  
Statutes of 1991, Chapter 333

Camille Shelton, Staff Counsel, introduced this item. She noted that the test claim statute eliminated the counties' authority to charge school districts for their share of the administrative

costs associated with counties' longstanding responsibility of assessing, collecting, and apportioning real property taxes for other local agencies and school districts. She explained that, although the test claim statute results in counties absorbing the schools' share of property tax administrative costs, counties are still performing the same property tax activities of assessing, collecting, and distributing property tax revenue that they have performed since before the enactment of the test claim statute. Therefore, staff recommended the Commission deny the test claim. Ms. Shelton noted a late filing from the claimant was received by staff the day before the hearing. The late filing was a letter dated March 28, 2000, of which staff had no record of previously receiving by either facsimile or mail.

Parties were represented as follows: Marcia Faulkner with the County of San Bernardino; Cedrick Zemitis with the Department of Finance; and, Allan Burdick with California State Association of Counties.

Ms. Faulkner argued that the point of the late filing was to support the claimant's position that the test claim legislation resulted in a shift of financial responsibility from the state to the counties, not from schools to counties. She clarified that the claimant does not allege that the property tax administration activities alone constitute the higher level of service. Rather, the claimant bases the test claim on those activities which, when coupled with the elimination of reimbursement to the county, allows reimbursement to fund a totally different activity of public education. Ms. Faulkner requested the Commission approve this test claim and find a new program is imposed on counties, that of public education, and that there was a shift of financial responsibility from the state to the counties.

Regarding the late filing, Ms. Shelton explained that the claimant was arguing that the statute has shifted the financial responsibility of funding public education from the state to the counties. She submitted that this test claim is not about funding public education, rather, it involves the administrative costs associated with assessing, collecting and distributing local property tax revenues which have been the sole responsibility of counties since Proposition 13. Citing *County of Los Angeles*, Ms. Shelton argued that the state has never operated the assessment and distribution of local property taxes—those have been responsibilities of the counties. She added that, even if the counties did receive money from the state, that was simply a reimbursement scheme and there had been no shift.

Member Beltrami asked if the counties' responsibilities actually went further back than Proposition 13. Ms. Shelton said she thought they did, but did not research the full history.

Mr. Zemitis concurred with staff's analysis.

Member Beltrami asked if Proposition 13 had limited local governments' flexibility. Mr. Zemitis replied that the voter-approved constitutional amendment set the property tax rate, which, in effect, did not allow locals to change their property tax rates. Member Beltrami asked if the fact that the state redirected property taxes from one local entity to another indicated that it was not just a local county operation. Mr. Zemitis replied that the administration of property taxes has always been local and that prior to, or just after Proposition 13 was passed, revenues decreased because the property tax rate decreased. He added that the state had surplus monies and chose to fund schools at a higher level and allow counties to retain extra property taxes. However, that had nothing to do with administration costs. In the early 1990s, that was shifted back, so schools now receive approximately 53

Ms. Shelton commented that, if the Commission took action on this claim today, it would not prevent the claimant from filing another test claim. If the Commission found a reimbursable state mandate, the reimbursement period would go back to the prior fiscal year. The claimant could also file a Parameters and Guidelines amendment.

Member Sherwood asked how that would impact the claimants financially, if a mandate were found. Ms. Shelton explained that, since no activities were alleged, there has been no analysis and therefore a decision on that could not be made. It would impact the claimant's ability to either withdraw the claim or amend it, but would not make a difference for the reimbursement period.

Ms. Faulkner noted that the test claim was filed in 1994. She asked what the reimbursement period for a Parameters and Guidelines amendment would be. Mr. Burdick replied that it would be 1999-00. Ms. Shelton clarified that, if a new test claim or a test claim amendment were filed, the reimbursement period for any new sections would also go back only one fiscal year. She added that, at the time this claim was filed, the Government Code did not base the reimbursement period on the original filing date for amendments.

Chairperson Porini summarized the Commission's options. Member Lazar asked if it would be to the claimant's detriment if the hearing were continued. The Chair said that it would since the Commission was having the hearing today.

Member Halsey made a substitute motion to adopt staff's recommendation.<sup>2</sup> Chairperson Porini seconded the motion. Member Steinmeier noted that, if the Commission were going to make a mistake, she would rather err on the side of the claimant and allow them to explain their position once more. She wanted to give the claimant one month and opposed the substitute motion.

The Chair noted that the motion before the Commission was whether or not to approve the substitute motion—a motion to deny the test claim. The motion carried 4-3, with Members Aronberg, Halsey, Sherwood, and Porini voting "Aye," and Members Beltrami, Lazar, and Steinmeier voting "No."

The Commission then voted on the motion to adopt the staff recommendation, which was to deny the test claim. The motion carried 4-3, with Members Halsey, Sherwood, Aronberg, and Porini voting "Aye," and Members Beltrami, Lazar, and Steinmeier voting "No."

Item 4      *Standardized Testing and Reporting Test Claim - 97-TC-23*  
San Diego Unified School District, Claimant  
Education Code Sections 60607 (a), 60609, 60615, 60630, 60640,  
60641, 60643  
Statutes of 1997, Chapter 828, et al.  
Title 5, California Code of Regulations, Sections 850-874

David Scribner, Staff Counsel, presented this item. He noted that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state the Standardized Testing and Reporting Program (STAR Program). Staff found that the test claim legislation imposed costs mandated by the state upon

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<sup>2</sup> See page 5 for Member Beltrami's motion to continue the item for one month to allow the claimants to evaluate whether they should file an amendment to the Parameters and Guidelines.

school districts and concluded that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against claims filed for this test claim.

Parties were represented as follows: Jim Cunningham, Richard Knott, and Robert Raines with the San Diego Unified School District; and, Jeannie Oropeza and Peter Zervinka with the Department of Finance.

Mr. Cunningham recommended adoption of staff's recommendation with two substantive changes. He requested deletion of the two sentences on page 12 that both read, "Costs associated with teacher time to administer the tests are not reimbursable." (Bullets one and four.) He argued that section 6 of Article XIII B of the California Constitution is intended to prevent the state from forcing a program on school districts without paying the cost. Mr. Cunningham submitted that the state could have used state employees to administer the tests rather than school district employees and if they had done so, the state would have incurred costs. He argued that, just because the state chose to use school district employees to carry out its tests, there was no valid reason that it should avoid reimbursement for those costs.

Mr. Knott argued that by the state's own directions, in their manuals, time spent by teachers in performing this activity are allowable costs for that particular activity. He cited to the State Administrative Manual, section 6610, published by the Department of Finance, wherein costs are defined to be the "redirection of existing staff and/or resources to an activity" and that "direct costs do include personnel needed to perform a line function or activity as prescribed." He cited sections 9200 through 9240 and section 8752.1 in further support of his argument. Mr. Knott submitted that the section 702 of the State Accounting Manual, published by the California Department of Education, described direct costs as "Those that are charged to the benefited program." It reads, "An example of costs easily identified with a particular program are teachers' salaries." Mr. Knott also submitted that in Circulars A-21 and A-87 by the Office of Management and Budget, direct labor costs are defined to be "Those costs that are identified with a particular activity including compensation of the employees for the time devoted to the activity."

Mr. Raines submitted that the extensive and detailed requirements related to administration, reporting, and processing and newly imposed penalties for incomplete or incorrect demographic reporting have contributed greatly to the complexity of the STAR Program. He explained the coordination, administration, and investigation activities performed by his district.

Ms. Oropeza argued that, since teachers are administering the tests during the regular school day, the costs of teachers' salaries are not reimbursable. She disagreed with staff that the legislation did not provide enough funding for the program and instead argued that, once the cost of administering the program is removed, the state provided more than sufficient funds in the Budget Act to cover the costs.

Mr. Cunningham argued that the statutes addressing offsets require the Department of Finance to prove that the statute included additional revenue, that the additional revenue was specifically intended to fund the costs of the mandate, and that the additional revenue was sufficient. He claimed that the Department did not prove any of those three criteria. He added that, even if teachers' time were discounted, districts would still have excess costs.

Mr. Knott explained that, since enactment of the STAR Program, the Revenue Limit Funding for districts has been adjusted for only three items: a cost of living adjustment; growth in student population (ADA); and participation in the teachers' salary adjustment beginning in 2000-01. He also submitted that the argument that districts would lose funding if students were not "in instruction" was invalid because the district's funding is tied to ADA generated up to its "P2 point in time" and that the test occurs after that time.

Ms. Oropeza was not sure what evidence the claimant was asking the DOF to provide. She submitted that the legislation did not have to provide sufficient additional revenue to cover costs for the mandate because the money was provided in the Budget Act. Ms. Oropeza noted that districts received \$1.8 billion in deficit reduction money as an additional adjustment that could be used for discretionary purposes. Mr. Knott replied that that money was for cost of living adjustments for 1990 through 1995.

Mr. Scribner noted that Government Code section 17514 defines costs mandated by the state as increased costs that a school district is required to incur. He recognized that teachers were performing a different activity, but added that, since the school day or school year was not extended, districts do not incur increased costs.

Mr. Cunningham disagreed. He submitted that the state has used a state activity to replace a district activity and that has a cost. Mr. Knott explained that any time there is a state imposed mandate, which takes time away from the instructional function, and yet the district wants to keep its students achieving at high standards, it is forced to find ways to give them back that instructional time. He argued that the redirection of effort is a legitimate cost chargeable to any program.

Member Steinmeier said she had a lot of sympathy for this issue, however, historically the Commission has not found a way under existing code sections, court rulings, or legislation to allow reimbursement for redirected time. She suspected the districts would need to go to the Legislature or the courts. Member Steinmeier moved adoption of staff's analysis. Member Sherwood agreed with Member Steinmeier's statements and seconded the motion.

Member Beltrami asked why districts do not hire people to administer the tests.

Mr. Cunningham said that might be the result. Member Beltrami recognized that the Legislature keeps mandating activities during the regular school day without additional help. Mr. Knott replied that his district attempts to carry out the STAR Program in the most cost efficient way, while recognizing that the classroom teacher is the best person to do it.

On a roll call vote, the motion carried unanimously.

#### INCORRECT REDUCTION CLAIMS

- Item 6      *School Crimes Statistics and Validation Reporting*  
              *Education Code Section 14044*  
              Penal Code Sections 628, 628.1, 628.2, and 628.6  
              Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;  
              Statutes of 1989, Chapter 1457  
              California Department of Education's "Standard School Crime  
              Reporting Forms"  
              A. Grossmont Union High School District, Claimant-99-4371-I-02  
              B. Panama-Buena Vista Union School District, Claimant  
                  99-4371-I-03



C. Carlsbad Unified School District, Claimant -99-4371-I-04

D. San Diego County Office of Education, Claimant -99-4371-I-05

Nancy Patton of the Commission staff introduced this item. She noted that staff's analysis addresses the Incorrect Reduction Claims (IRCs) for four claimants. Staff recommended the Commission find that the State Controller's Office (SCO) did not incorrectly reduce the claims and deny the claims based on the following:

- Case law and statute provide the SCO with the authority to audit claims for legality and correctness and to adjust the claims for reimbursement if they are excessive or unreasonable.
- Not all mandates require training. If training is needed to carry out a mandate, it should be addressed in the Parameters and Guidelines.
- The Commission does not have the authority to determine whether the SCO created a standard of general application without benefit of law or due process of rulemaking—that determination falls under the authority of the Office of Administrative Law.

Parties were represented as follows: Keith Petersen representing the four claimants; Jim Cunningham, Interested Party, with the San Diego Unified School District; Jeff Yee and Paige Vorhies with the State Controller's Office; and, Marcia Faulkner, Interested Party, with the County of San Bernardino.

Mr. Petersen argued that the State Department of Education's Guidelines regarding this mandate specifically directed districts to appoint a district training officer to attend state training and for that officer to train district staff. Nine years ago when these Parameters and Guidelines were adopted, training costs were typically not a stated activity. Mr. Petersen submitted that only four Parameters and Guidelines between 1979 and 1998 enumerated training, which usually pertained to introduction of new curriculum material and training teachers on how to implement it and not to general staff training.

Mr. Cunningham submitted that training is a part of every new mandate. He argued that just because districts began including training in Parameters and Guidelines in 1998 to eliminate confusion on the issue does not mean that it should not be reimbursed for Parameters and Guidelines adopted prior to 1998. Further, Mr. Cunningham agreed with Mr. Petersen that, in this case, the State Department of Education's Guidelines clearly require training.

Mr. Petersen contended that, should the Commission decide that training must be in the Parameters and Guidelines, they should not apply that policy *ex post facto*. While he agreed that the SCO has the power to audit claims, he submitted that 1) there is no statute saying that training costs are not reimbursable and 2) it is a factual question of whether or not an audit occurred. Mr. Petersen further alleged that staff's recommendation did not cover 22 statements of fact contained in a letter dated July 19, 2000.

Mr. Vorhies explained that the SCO performs a claim audit, which has a very narrow perspective. Auditors look at 1) the eligibility of costs claimed that are explicitly stated in the statute and Parameters and Guidelines; 2) whether the costs are reasonable or excessive, and 3) whether there is actual proof of the expenditure. He added that, as to the subject issue, the SCO concluded that it is a decision for the Commission to make.

Regarding the letter dated July 19, 2000, Ms. Patton explained that staff revised its analysis to note that the claimants had reiterated their original arguments. She maintained that the issue

before the Commission was whether the SCO incorrectly reduced the claims. Staff found that since the statutes, Parameters and Guidelines, and Claiming Instructions do not contain training, the SCO did not incorrectly reduce the claims.

Mr. Petersen clarified that staff revised its analysis in response to the June 27, 2000 letter and did not make changes in response to the July 19, 2000 letter. He submitted that the executive order adopted by the Commission for this test claim requires training.

Mr. Vorhies explained that, unfortunately, the SCO does not usually get involved in the mandate process until the Parameters and Guidelines phase. Member Sherwood asked if the additional information from Mr. Petersen changed Mr. Vorhies' position. Mr. Vorhies replied that he would have to look into that.

Member Sherwood asked if claimants were paid for training in the claims before 1998. Mr. Petersen replied that, if it was claimed, they were probably paid. Mr. Vorhies said if that was true, it was unintentionally. Mr. Petersen explained that it might have been identified as an implementation cost if training was not an activity. He noted that the education community has made three unsuccessful attempts to resolve this issue since 1990.

Member Beltrami could not think of a government budget that does not include training. From an audit perspective, he asked Mr. Vorhies if he thought training was an inherent aspect of new regulations, rules or requirements. Mr. Vorhies replied that that was for the Commission to determine. He added that, in the audit, the SCO asks "Is it in writing?" and "How can we pay it?"

Member Beltrami noted that the comments today suggest that training has been paid in the past and asked if it was identified as such. Mr. Vorhies responded that there has not been a payment policy in the past for training and that the SCO has always followed the claim audit procedure—if the eligible item is listed, they will pay it.

Member Steinmeier asked what options the claimants had if they could show that training flowed from the statute and whether the Parameters and Guidelines could be amended. Ms. Jorgensen replied that they could be. Mr. Petersen explained that the option of amending the Parameters and Guidelines was not viable because the SCO adjustment was made after the period for which he could file an amendment to capture that year's costs.

Member Halsey asked if the claimant can submit additional documentation to the SCO when their claim is reduced or denied. Mr. Petersen said they could if requested. He submitted that the SCO did not request it in this case, which is why they said they did not conduct an audit.

Mr. Vorhies said that the Commission should also consider whose responsibility it is to prove the claim. He submitted that, if the SCO denies a claim and the claimant has proof, they should submit it. Mr. Vorhies clarified that the SCO makes every effort possible to appropriately reimburse money due to the claimants.

Mr. Petersen noted that, in his experience as a state auditor, he had to ask for documentation before making an adjustment. However, he understood that the SCO is reviewing thousands of claims and does not have time to read the actual test claim to see that training was included.

Chairperson Porini asked what Mr. Petersen did when the claims were denied. He replied that he filed the IRC. The Chair asked if he then gave the SCO the documentation showing that training was included. Mr. Petersen replied that he provided the documentation required by the incorrect reduction claim.

Ms. Patton noted that the executive order listed training as "suggested." Mr. Petersen submitted that the Commission had adopted the "suggestions" as a mandate. He added that the "suggestion" was between an implicit requirement and an express requirement and that the Commission has recognized implicit requirements as being reimbursable.

Ms. Faulkner commented that, in her experience, she knew of no way to implement state or federal regulations and statutes without conducting some kind of training.

Member Aronberg moved to adopt staff's recommendation. [There was no second.]

Member Steinmeier moved to find the SCO incorrectly reduced the claims and that training should be included. Member Beltrami seconded the motion.

Member Halsey asked if that meant the Commission was saying for all future Parameters and Guidelines that training must be included. The Chair said they were not. Member Beltrami added that it was for something that began in 1991 under a certain set of circumstances and understandings.

Member Sherwood asked whether the Commission would be changing the Parameters and Guidelines if it found an incorrect reduction. The Chair said it would not. Member Sherwood asked if that would give the SCO the ability to include training. Mr. Vorhies said that the SCO would still have no direction in the statute or Parameters and Guidelines to pay for training. Mr. Vorhies questioned the reason for Parameters and Guidelines and noted his concern for setting precedent for future claims. Member Sherwood replied that they were only talking about this claim. Mr. Vorhies said that there will be several more. Member Sherwood asked if the SCO could go back to the test claim decision. Mr. Vorhies agreed that the SCO legal staff would analyze the decision and make a determination.

Member Halsey asked if the SCO was disagreeing that there is a statute that requires training. Mr. Vorhies replied that everyone agrees the statute and Parameters and Guidelines do not mention training. He noted Mr. Petersen's argument that the training in the test claim was not carried over into the Parameters and Guidelines.

Ms. Jorgensen asked if the motion included reimbursement for all training costs or only those for which there is verification. Member Steinmeier replied that verification is part of the process, so the motion included only verified costs. She added that they were talking about these specific claims. Mr. Petersen agreed that IRCs are not precedent setting.

Mr. Vorhies asked if staff looked at the executive order in its analysis. Ms. Patton said she did and that staff and the Department of Finance both looked at training as suggested.

On a roll call vote, the motion passed 5-2, with Members Steinmeier, Beltrami, Halsey, Lazar, and Sherwood voting "Aye," and Members Aronberg and Porini voting "No."

Member Beltrami asked if it would be appropriate at this time to consider the sole issue of training. Ms. Higashi offered to convene a workshop with the claimants, representatives, and SCO.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 10      *Peace Officers Procedural Bill of Rights* - (CSM - 4499)  
City of Sacramento, Claimant  
Government Code Sections 3300 through 3310  
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173,  
1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980,  
Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983,  
Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990,  
Chapter 675

Camille Shelton, Staff Counsel, introduced this item. She noted that staff made several modifications to the Claimant's Proposed Parameters and Guidelines to conform them to the Commission's Statement of Decision. She recommended the Commission adopt the Parameters and Guidelines, as modified by staff.

Parties were represented as follows: Edward Takach, Pam Stone, and Dee Contreras, for the City of Sacramento; Allan Burdick with CSAC SB 90 Service; Steve Huish with the Sacramento Police Officers' Association and PORAC; and, Jim Lombard with the Department of Finance.

Ms. Stone argued that this test claim was filed in 1994 and that, at that time, Statements of Decision did not specify every reimbursable activity. She submitted that the specific activities to be reimbursed are developed in the Parameters and Guidelines. Ms. Stone contended that the Commission's regulations do not require an activity to be specifically included in the Statement of Decision in order for it to be included in the Parameters and Guidelines.

Ms. Contreras argued that POBAR supersedes their collective bargaining agreement and has created litigation issues that would not exist but for POBAR. She explained that the issues surrounding litigation are broad and are fundamental to management's right to operate, assign, reassign, and move people. Ms. Contreras submitted that litigation costs were discussed somewhat at the last hearing and that it was inherent throughout this process that it was part of the mandate.

Ms. Stone added that section 3309.5 was included in the test claim and that the record reflects that litigation aspects were discussed at the time the initial test claim was heard and have discussed throughout.

Mr. Lombard concurred with staff's analysis.

Ms. Shelton explained that Article XIII B requires that in order for reimbursement to come from the state there must be a finding of a new program or higher level of service. Further, the implementing legislation in Government Code section 17514 requires a finding of costs mandated by the state. She maintained that the Commission never made a finding that section 3309.5 constitutes a reimbursable state mandated statute. Ms. Shelton agreed that the Commission's regulations allow it to include other activities in the Parameters and Guidelines that were not specifically stated in the Statement of Decision or statutes in question and that staff did that in these Parameters and Guidelines. However, those activities stemmed directly from the statutes addressed by the Commission. Ms. Shelton explained section 3309.5 has not

been analyzed by staff. If the Commission wanted to include it, she thought the only option was to find that legal defense costs are reasonably related to section 3304, subdivision (b).

Mr. Huish contested reimbursement to the City for any POBAR activities. He contended that POBAR bars the agency from violating the officers' rights and that the City should not be reimbursed for that activity. He supported staff's recommendation.

Mr. Burdick argued that, without POBAR, there would not be any of these lawsuits. Ms. Shelton noted that his argument was relevant to a test claim hearing in the determination of whether a statute imposes a new program or higher level of service.

Member Beltrami noted that there is a lawsuit possibility in almost every action. Mr. Burdick submitted that this case is different because the right is given in POBAR—the action is directly related to the program. Member Beltrami noted that it was not in the statute.

Citing the transcript, Ms. Contreras added that she discussed litigation at the test claim hearing. Ms. Shelton agreed that it was discussed, which was necessary to determine how much of this test claim was different than prior law through Skelly or through the due process clause of the United States Constitution. However, the Commission's regulations require the claimant to provide a description of how the statute imposes a new program or higher level of service. She noted that the claimant's briefs and narratives did not include section 3309.5 and that this section never had any analysis, briefing, or discussion until the Parameters and Guidelines.

Ms. Stone agreed that section 3309.5 has never been analyzed by staff, the claimant, or the Department of Finance. Mr. Burdick stated that this gets back to the issue of the role of the test claim and parameters and guidelines discussed earlier today. He submitted that, like regulations flush out what is in the statute, parameters and guidelines flush out what is in the decision.

Member Steinmeier agreed that certain litigation, with narrow limits, flows directly from POBAR. She maintained that the problem was that there was nothing in actual text where the section has been analyzed and so there would not be clear direction for the SCO to know which claims to pay or not pay.

Regarding Mr. Burdick's reference to regulations, Chairperson Porini noted that, if something is not specifically in the statute, the Office of Administrative Law throws out the regulations. She was uncomfortable adopting something that was not part of the test claim.

Member Beltrami asked why Parameters and Guidelines were necessary rather than just using the test claim. The Chair replied that the claim needs to include all of the specific code sections to be discussed. Ms. Stone argued that the statute was alleged, though the section was not analyzed or discussed. She agreed with Member Steinmeier that it was a very narrow issue.

Ms. Shelton noted that the Commission does not have unlimited discretion in the Parameters and Guidelines—it is bound by the Constitution and Government Code. She reiterated that activities must stem from a statute already determined by the Commission to impose a reimbursable state mandated program.

Ms. Shelton explained that, if the Commission wanted staff to draft language to include legal defense costs, the Commission must make a finding that legal defense costs are reasonably related to the administrative appeal under the commission's regulations.

Member Beltrami moved to find that legal defense costs, under section 3309.5, are reasonably related to the right to administrative appeal. Member Steinmeier seconded the motion.

On a roll call vote, the motion failed 2-5, with Members Beltrami and Steinmeier voting "Aye," and Members Halsey, Lazar, Sherwood, Aronberg and Porini voting "No."

Member Steinmeier moved staff's analysis. With a second by Member Halsey, the motion carried 6-1. Members Aronberg, Halsey, Lazar, Sherwood, Steinmeier, and Porini voted "Aye," and Member Beltrami voted "No."

#### PROPOSED REGULATORY ACTION - POSTPONED

- Item 12      Staff Report on Public Comment and Proposed Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 adding section 1183.09 - Dismissals

This item was postponed.

#### EXECUTIVE DIRECTOR'S REPORT

- Item 13      Workload, Governor's Budget, Local Claims Bill, Legislation, Next Agenda, etc.

Paula Higashi reported the following:

- The Local Claims Bill was signed by the Governor. Therefore, Open Meetings Act Incorrect Reduction Claims and new mandates have been funded.
- The August Commission hearing will be long and will have a designated lunch break.
- A rulemaking hearing will be held at 1:30 p.m. at the Commission's office.
- Commission staff is hosting an open house from 3:00 p.m. to 5:00 p.m. today.
- Staff will confer with the interested party representatives and the State Controller's Office to discuss the issue of omissions and prior Parameters and Guidelines. Staff will report back to the Commission on that issue.

#### CLOSED EXECUTIVE SESSION

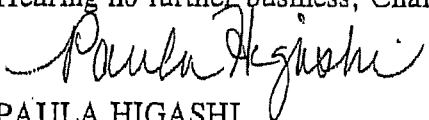
Hearing no further business, Chairperson Porini recessed into closed executive session. She noted that the Commission would meet pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda, and Government Code section 11126, subdivision (a), and 17527, to confer on personnel matters listed on the published notice and agenda.

#### REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini noted that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation listed in the published notice and agenda, and Government Code sections 11126, subdivision (a), and 17527 to confer on personnel matters listed on the published notice and agenda.

## ADJOURNMENT

Hearing no further business, Chairperson Porini adjourned the meeting at 1:24 p.m.

A handwritten signature in cursive script, appearing to read "Paula Higashi".

PAULA HIGASHI  
Executive Director

f:/meetings/minutes/2000/072700





BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

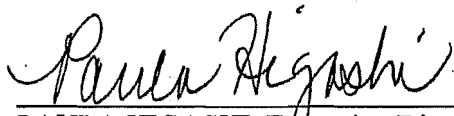
NO. CSM 4499

**ADOPTION OF  
PARAMETERS AND  
GUIDELINES PURSUANT  
TO GOVERNMENT CODE  
SECTION 17557 AND  
TITLE 2, CALIFORNIA  
CODE OF REGULATIONS,  
SECTION 1183.12**

(Adopted on July 27, 2000)

**ADOPTED PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

  
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PAULA HIGASHI, Executive Director

## **PARAMETERS AND GUIDELINES**

Government Code Sections 3300 through 33 10

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter  
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

### *Peace Officers Procedural Bill of Rights*

#### **I. SUMMARY AND SOURCE OF THE MANDATE**

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 33 10, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14.

#### **II. ELIGIBLE CLAIMANTS**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

#### **III. PERIOD OF REIMBURSEMENT**

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 3 1 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 2 1, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 1756 1, subdivision (d)( 1) of the Government Code, all claims for reimbursement of initial

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<sup>1</sup>Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities? are eligible for reimbursement:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

##### B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 - The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

#### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303 .)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
  - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
  - Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
  - Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment is *not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

## **V. CLAIM PREPARATION AND SUBMISSION**

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

### **SUPPORTING DOCUMENTATION**

Claimed costs shall be supported by the following cost element information:

#### **A. Direct Costs**

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

##### **1. Salaries and Benefits**

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

##### **2. Materials and Supplies**

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

##### **3. Contract Services**

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

##### **4. Travel**

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.



Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

## **5. Training**

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location.

Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

## **B. Indirect Costs**

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

## **VI. SUPPORTING DATA**

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

## **VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT**

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.



COMMISSION ON STATE MANDATES

NOTICE AND AGENDA <sup>1</sup>

State Capitol, Room 126  
Sacramento, California

March 29, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 February 22, 2001

III. PROPOSED CONSENT CALENDAR (action)

*Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in before consideration of Item 2.

A. TEST CLAIM

Item 2 *Campus Safety Plans*, CSM 98-TC-20  
Contra Costa Community College District, Claimant  
Education Code Sections 67380 and 67381  
Statutes of 1990, Chapter 1638; Statutes of 1991, Chapter 585; Statutes of 1992, Chapter 886; Statutes of 1993, Chapter 8; Statutes of 1996, Chapter 1075; Statutes of 1998, Chapter 284

B. PROPOSED STATEMENT OF DECISION - DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

Item 3\* Dismissal of California Department of Education Management  
Advisories 95-03 and 95-07 from the *Employee Benefits Disclosure Test Claim* - 98-TC-03 (amendment)  
Clovis Unified School District, Claimant

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 4\* *Health Benefits for Survivors of Peace Officers and Firefighters*  
97-TC-25  
City of Palos Verdes Estates, Claimant  
Labor Code Section 4856, Subdivisions (a) and (b)  
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

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<sup>1</sup> <http://www.csm.ca.gov>

- Item 5      *School Site Councils and Brown Act Reform-* CSM 4501  
Kern Union High School District, San Diego Unified School District, and  
County of Santa Clara, Co-Claimants  
Education Code Section 35147, Government Code Section 54952  
Statutes of 1993, Chapter 1138, Statutes of 1994, Chapter 239

B. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 6\*      *Peace Officers Procedural Bill of Rights* – CSM-4499 (Tentative)  
City of Sacramento, Claimant  
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174,  
and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367;  
Statutes of 1982, Chapter 944; Statutes of 1983, Chapter 964; Statutes of  
1989, Chapter 1165; and,  
Statutes of 1990, Chapter 675

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 7      Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE  
SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may  
begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as  
necessary and appropriate, upon the following matters pursuant to Government Code  
section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection District et al. v. State of California, et al.*, Case  
Number 5078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in  
the Appellate Court of California, Second Appellate District, Division 2.
3. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number  
A089524, in the Appellate Court of California, First Appellate District, Division
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case  
Number GIC 737638, in the Superior Court of the State of California, County of  
San Diego.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case  
Number BS061159, in the Superior Court of the State of California, County of  
Los Angeles.
6. *San Diego Unified School District and San Juan Unified School District v.  
Commission on State Mandates, et al*, Case Number 00CS00810, in the Superior  
Court of the State of California, County of Sacramento. (CSM 96-365-01)
7. *State of California, Department of Finance v. Commission on State Mandates,  
Kern Union High School District; San Diego Unified School District, County of  
Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate  
District.

8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. (CSM-96-362-01)
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et. al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
12. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq.

#### IX. REPORT FROM CLOSED EXECUTIVE SESSION ADJOURNMENT

### WORKSHOP DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

March 29, 2001

1:30 to 3:00 PM.

COMMISSION ON STATE MANDATES  
CONFERENCE ROOM  
980 NINTH STREET, SUITE 300  
SACRAMENTO

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

COMMISSION ON STATE MANDATES  
March 29, 2001  
**PROPOSED CONSENT CALENDAR (action)**

HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,  
CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENT OF DECISION – DISMISSAL OF WITHDRAWN  
PORTIONS OF TEST CLAIM

- Item 3\*     Dismissal of California Department of Education Management Advisories  
              95-03 and 95-07 from the *Employee Benefits Disclosure* Test Claim -  
              98-TC-03 (amendment)  
              Clovis Unified School District, Claimant

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4\*     *Health Benefits for Survivors of Peace Officers and Firefighters*  
              97-TC-25  
              City of Palos Verdes Estates, Claimant  
              Labor Code Section 4856, Subdivisions (a) and (b)  
              Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 6\*     *Peace Officers Procedural Bill of Rights* – CSM-4499 (Tentative)  
              City of Sacramento, Claimant  
              Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174,  
              and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367;  
              Statutes of 1982, Chapter 964; Statutes of 1983, Chapter 964; Statutes of  
              1989, Chapter 1165; and, Statutes of 1990, Chapter 675





## ITEM 6

### REVISED PROPOSED STATEWIDE COST ESTIMATE

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994;

Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and

Statutes of 1990, Chapter 675

#### *Peace Officers Procedural Bill of Rights*

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##### Executive Summary

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the *Peace Officers Procedural Bill of Rights* (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

The City of Sacramento filed the test claim for POBOR on December 21, 1995. The Commission adopted the Statement of Decision on November 30, 1999 and the Parameters and Guidelines on July 27, 2000 (corrected August 17, 2000). Costs for compliance with the mandates in Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Staff distributed the revised proposed Statewide Cost Estimate to the mailing list on March 23, 2001.

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<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

## Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller's Office (SCO) for prior fiscal years by eligible claimants.<sup>2</sup>
- Staff projected totals for fiscal year (FY) 2000-01 and FY 2001-02 by using the FY 1999-00 actual claim total filed by claimants with the SCO multiplied by the implicit price deflator for that fiscal year, as forecasted by the Department of Finance.

## Staff Recommendation

Staff recommends that the Commission adopt the proposed Statewide Cost Estimate of \$152,506,000 for costs incurred in complying with the POBOR provisions.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal year	Actual Claims Filed with SCO	Totals
1994-95	165	\$11,206,423
1995-96	182	\$13,577,396
1996-97	185	\$13,823,408
1997-98	191	\$15,817,160
1998-99	194	\$20,993,205
1999-2000	201	\$24,850,827
2000-01 (3.6%*)	n/a	\$25,745,457
2001-02 (2.9%*)	n/a	\$26,492,075
Total		\$152,505,951
Total Statewide Cost Estimate		\$152,506,000

\*Implicit Price Deflator, as defined by the Department of Finance.

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$152,505,951 has been rounded to \$152,506,000.

<sup>2</sup> Claims filed with State Controller's Office as of March 23, 2001.

## **Statewide Cost Estimate Calculation**

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994;

Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and

Statutes of 1990, Chapter 675

## ***Peace Officers Procedural Bill of Rights***

### **Mandate Background**

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the *Peace Officers Procedural Bill of Rights* (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>3</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

The City of Sacramento filed the test claim for POBOR on December 21, 1995. The Commission adopted the Statement of Decision on November 30, 1999 and the Parameters and Guidelines on July 27, 2000 (corrected August 17, 2000). Costs for compliance with the mandates in Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

### **Eligible Claimants**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

### **Reimbursable Activities**

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities are eligible for reimbursement:

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<sup>3</sup> See footnote 1.

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate,
3. Updating the status of the POBOR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 - The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;

- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));
  - a) The further proceeding is not a disciplinary action;
  - b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
  - c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
  - e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
  - a) When the investigation does not result in disciplinary action; and
  - b) When the investigation results in:
    - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
    - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
    - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
    - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

### Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There will not be any additional late claims filed.<sup>4</sup>

### Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller's Office (SCO) for prior fiscal years by eligible claimants.<sup>5</sup>
- Staff projected totals for fiscal year (FY) 2000-01 and FY 2001-02 by using the FY 1999-00 actual claim total filed by claimants with the SCO multiplied by the implicit price deflator for that fiscal year, as forecasted by the Department of Finance.

### Staff Recommendation

Staff recommends that the Commission adopt the proposed Statewide Cost Estimate of \$152,506,000 for costs incurred in complying with the POBOR provisions.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal year	Actual Claims Filed with SCO	Totals
1994-95	165	\$11,206,423
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2001-02 (2.9%*)	n/a	\$26,492,075
Total		\$152,505,951
Total Statewide Cost Estimate		\$152,506,000

\*Implicit Price Deflator, as defined by the Department of Finance.

<sup>4</sup> Late claims filed with the Controller's Office as of March 23, 2001 are included in this estimate, minus the appropriate penalty. It is assumed that additional late claims will not be filed. If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the State Controller's Office will prorate the claims. If the deficiency funds are not appropriated in the Budget Act, the Controller will report this information to the legislative budget committees and the Commission on State Mandates. The Commission will then include the deficiency in its report to the Legislature in order to ensure that it is included in the next claims bill.

<sup>5</sup> Claims filed with State Controller's Office as of March 23, 2001.

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$152,505,951 has been rounded to \$152,506,000.



PUBLIC HEARING

COMMISSION ON STATE MANDATES

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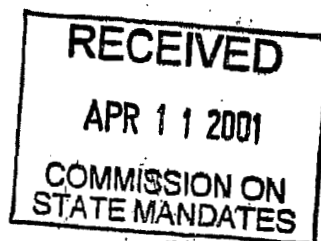
ORIGINAL

TIME: 9:30 a.m.

DATE: March 29, 2001

PLACE: State Capitol, Room 4<sup>3</sup><sub>27</sub>  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

1 the minutes from the February 22nd meeting. Changes,  
2 corrections, additions? Comments? Motion?

3 MR. SHERWOOD: Move for approval.

4 MS. STEINMEIER: Second.

5 CHAIRPERSON PORINI: Okay. We have a motion and  
6 a second. All those in favor indicate with aye.

7 MULTIPLE SPEAKERS: Aye.

8 CHAIRPERSON PORINI: Opposed?

9 The minutes carry.

10 That takes us to -- I'm sorry, I interrupted  
11 there. You should have announced our consent calendar.

12 MS. HIGASHI: Our proposed consent calendar  
13 would be next. It consists of Item 3, Dismissal of  
14 California Department of Education Management Advisories  
15 from Employee Benefits Disclosure Test Claim and  
16 Adoption of Proposed Parameters and Guidelines for  
17 Health Benefits for Survivors of Peace Officers and  
18 Firefighters and Item 6, Peace Officers Procedural Bill  
19 of Rights. It's a statewide cost estimate. It's  
20 Items 3, 4 and 6. We have --

21 MR. BELTRAMI: Madame Chair, I'd like to move  
22 approval with a comment on Item 6:

23 CHAIRPERSON PORINI: All right.

24 MR. BELTRAMI: I was really taken aback by  
25 the -- how costly that program is. I was surprised.

1 CHAIRPERSON PORINI: All right.

2 MS. STEINMEIER: Second.

3 CHAIRPERSON PORINI: We have a motion and a  
4 second, and I think that we all concur with the surprise  
5 factor. Any further discussion?

6 All those in favor indicate with aye.

7 MULTIPLE SPEAKERS: Aye.

8 CHAIRPERSON PORINI: Opposed?

9 That takes care of our consent calendar,  
10 Items 3, 5 (sic), and 6.

11 MS. HIGASHI: This brings us to our test claim  
12 hearing on Item 2, campus safety plans. This item will  
13 be presented by staff counsel, Kathy Lynch.

14 MS. LYNCH: Good morning. This test -- can you  
15 hear me?

16 MS. STEINMEIER: Yeah.

17 MS. LYNCH: This test claim addresses two  
18 sections of the Education Code, sections 67380 and  
19 67381.

20 The first section, 67380, requires some  
21 postsecondary institutions to compile and report  
22 occurrences and arrests of specific crimes committed on  
23 their respective campuses and to report this information  
24 to students, employees, and applicants upon request.  
25 Section 67380 also requires these institutions to



## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 437

Sacramento, California

March 29, 2001

Present: Chairperson Annette Porini  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Heather Halsey  
Representative of the Director of the Office of Planning and Research  
Member John Harrigan  
Representative of the State Controller  
Member Albert Beltrami  
Public Member  
Member Joann Steinmeier  
School Board Member  
Member John Lazar  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:31 a.m.

### APPROVAL OF MINUTES

Item 2 February 22, 2001

On motion by Member Sherwood and second by Member Steinmeier, the minutes for the February 22, 2001 Commission hearing were unanimously adopted.

### PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

#### PROPOSED STATEMENT OF DECISION - DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

Item 3 Dismissal of California Department of Education Management Advisories  
95-03 and 95-07 from the *Employee Benefits Disclosure* Test Claim  
98-TC-03 (amendment)  
Clovis Unified School District, Claimant

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4     *Health Benefits for Survivors Of Peace Officers and Firefighters*  
97-TC-25  
City of Palos Verdes Estates, Claimant  
Labor Code Section 4856, Subdivisions (a) and (b)  
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

ADOPTION OF STATEWIDE COST ESTIMATE

- Item 6     *Peace Officers Procedural Bill of Rights* - CSM 4499  
City of Sacramento, Claimant  
Statutes of 1976, Chapter 465; Statutes of 1980, Chapter 1367; Statutes of  
1982, Chapter 944; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter  
1165; Statutes of 1990, Chapter 675

On motion by Member Beltrami, who indicated that he was surprised by the amount of Item 6, the statewide cost estimate for Peace Officers Procedural Bill of Rights, and second by Member Steinmeier, the consent calendar, consisting of Items 3, 4, and 6, was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

TEST CLAIM

- Item 2     *Campus Safety Plans* - CSM 98-TC-20  
Contra Costa Community College District, Claimant  
Education Code Sections 67380 and 67381  
Statutes of 1990, Chapter 1638; Statutes of 1991, Chapter 585; Statutes of  
1992, Chapter 886; Statutes of 1993, Chapter 3; Statutes of 1996, Chapter  
1075; Statutes of 1998, Chapter 284

Kathy Lynch, Staff Counsel, introduced this item. Ms. Lynch stated that Education Code section 67380 requires some postsecondary institutions to compile and report occurrences and arrests of specific crimes committed on campus and to report this information to students, employees, and applicants, upon request, and to post and distribute their campus safety plans. Staff found that this section is not subject to article XIII B, section 6 of the California Constitution, because community colleges are not required to comply with its requirements.

Ms. Lynch further stated that section 67381 requires some campus law enforcement agencies to enter into written agreements with local law enforcement agencies delineating their respective geographical boundaries for investigating certain violent crimes on college campuses. Staff found that this section is a mandated program, because it carries out the peculiarly governmental function of providing police protection to the public, as the court held in *Carmel Valley*. Staff also found that section 67381 is a new program or higher level of service under article XIII B, section 6 because it was nonexistent in prior law. Section 67381 imposes costs mandated by the state for the following activities: (1) one-time activity of preparing a written agreement or (2) the one-time activity of reviewing and modifying existing agreements to conform with section 67381

and (3) the one-time activity related to placing these written agreements in a place of public viewing and transmitting them to the Legislative Analyst.

The parties were represented as follows: Mr. Matt Aguilera representing the Department of Finance and Mr. Keith Petersen representing the claimant.

Ms. Higashi swore in the witnesses.

Mr. Petersen agreed with staff's finding that section 67380 did not constitute a reimbursable state mandate. However, he disagreed, in part, with staff's analysis of section 67381.

Mr. Petersen agreed that section 67380 imposed a reimbursable mandate but disagreed that the reimbursable activities were only one-time expenses. Mr. Petersen claimed that there was nothing in section 67380 that stated the activities were limited to one-time expenses.

Mr. Petersen stated that over time these agreements may need to be modified as additional police forces are created or if geographical boundaries are changed. Also, as the Legislature changes what constitutes a crime, the agreements will also have to be modified. Therefore, staff's recommendation should be modified to remove the one-time limitation from the three recommended areas of reimbursement. Member Halsey asked Mr. Petersen what should be amended. Mr. Petersen responded the activity of preparing the written agreements, the activity of reviewing and modifying existing agreements and the activity of placing these agreements in public viewing.

Member Sherwood asked Department of Finance and Commission staff to respond.

Mr. Aguilera with Department of Finance stated that Commission staff is applying the court ruling in *Carmel Valley* to this claim stating that police and fire protection are services peculiar to government and therefore reimbursable. He also stated that section 67381 imposes two administrative functions on colleges: entering into written agreements with law enforcement agencies and reporting to the Legislative Analyst. Since these are administrative functions rather than law enforcement functions, they are not reimbursable. He also noted that these activities are not reimbursable, because they are not unique to local government, since they would be performed by both private and public colleges. Member Beltrami asked

Mr. Aguilera to clarify whether the Department of Finance agreed that these activities are basic functions, like police and fire. Mr. Aguilera responded that he was restating the position of Commission staff rather than Department of Finance's position.

Member Beltrami noted that the test claim legislation includes independent postsecondary institutions as college entities that must enter in written agreements with local law enforcement agencies.

Ms. Lynch responded that although there are private colleges that are affected by this claim, the activities are police activities, and therefore, you never get to the issue of whether or not the activities are unique to government.

Member Beltrami asked if Stanford is drafting an agreement with the City of Palo Alto Police Department, isn't that a function of a private organization?

Ms. Lynch defined it more as a police activity, because it requires campus police and local law enforcement to decide how to take care of campus crimes.

Member Sherwood requested that the issue of one-time activities be addressed. Ms. Lynch stated that although there is nothing in statute expressly limiting the activities to one-time; the test claim legislation refers to violent crimes. It seems unlikely that a new violent crime will

come up that would need to be addressed in the agreements. Member Halsey asked if the formation of new cities or new campuses would cause agreements to be changed.

Camille Shelton, Acting Chief Legal Counsel, clarified that this issue is a parameters and guidelines issue. If the Commission finds that it is reasonably necessary to eliminate the one-time nature of the activity, then that would be up to the Commission. She noted that in the past, the Commission has found that activities with an express completion date are one-time activities. Certainly with new agencies, it would be one-time per agency. In contrast, the test claim legislation does not specify what the agreements have to entail, and if you allow the agreement to control, and it says it is effective for two years, then it may need to be reviewed and modified. The Commission would have to take this into consideration to support Mr. Petersen's position.

Member Sherwood agreed with Mr. Petersen, stating that there could be situations that could call for an additional agreement or new agreement.

Member Harrigan asked when the fiscal implications of their decision would be considered.

Ms. Higashi responded that we typically do not see the fiscal implications until after the parameters and guidelines are adopted, which detail the activities that would be reimbursable. That would be the next phase.

Member Steinmeier moved the staff analysis with the elimination of the words "one-time" from the activities. With a second by Member Lazar, the motion carried 4-3. Members Porini, Beltrami, and Harrigan voted "No."

#### INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

##### PROPOSED PARAMETERS AND GUIDELINES

- Item 5      *School Site Councils and Brown Act Reform* - CSM 4501  
Kern Union High School District, San Diego Unified School District, and  
County of Santa Clara, Co-Claimants  
Education Code Section 35147 and Government Code Section 54952  
Statutes of 1993, Chapter 1138, Statutes of 1994, Chapter 239

Nancy Patton, Staff Services Manager, introduced this item and noted that a technical correction was made to include indirect costs with the uniform cost allowance, on pages 13 and 14 of the proposed parameters and guidelines. She explained that staff modified claimants' proposal to conform to the Commission's statement of decision, and recommended that the proposed Parameters and Guidelines, as modified and corrected by staff, be approved.

Parties were represented as follows: Dr. Carol Berg, representing Education Mandated Cost Network, Mr. Keith Petersen, representing San Diego Unified School District (co-claimant), Mr. Ron Fontaine, representing Kern High School District (co-claimant), and Mr. Jeff Bell, representing the Department of Finance.

Mr. Petersen, Dr. Berg, and Mr. Fontaine supported the staff recommendation and urged adoption of that recommendation.

Mr. Bell noted that DOF continues to believe that this program does not result in costs to the state; however, they understand the process of developing parameters and guidelines must continue to move forward, based on the Commission's decision. The DOF supports the use of a



uniform cost allowance, as long as it is based on a valid statewide sample. This survey was sent to 160 out of 8,331 schools, of which 111 responded. Of those respondents, 85 percent were from San Diego. According to Mr. Bell, this is not an accurate representation of a statewide sample. In addition, a variety of people at a variety of districts completed the sample, and they provided nothing to document their costs. Finally, Mr. Bell asserted that only salaries and benefits data from San Diego Unified School District was used for the survey. Therefore, the survey is not a valid statewide survey.

Dr. Berg responded that Mr. Cunningham, former representative for San Diego Unified School District, did offer rebuttal comments that are in the record. In addition, she noted that statewide averages for salaries and benefits were used in the survey.

Member Steinmeier asked if there was a variation in the size and types of districts used in the survey, even though all five districts were in Southern California. Mr. Petersen responded that Mr. Cunningham used responses from different grade levels in San Diego, and Mr. Petersen provided responses from other school districts in the state. Mr. Petersen also noted that this survey is the largest sample ever used to support uniform cost allowances. Statewide cost estimates have been developed by Commission staff with much less data.

Member Steinmeier asked if rural districts were included. Mr. Petersen and Dr. Berg responded that San Diego has all types of schools in its jurisdiction, and thus, urban and suburban districts were included.

Member Sherwood stated that he had to agree with DOF. It would be better if statewide data were used. He noted that the survey was drawn from different areas in San Diego. Dr. Berg agreed. Mr. Bell argued that while San Diego might be diverse, there is no documentation to prove that San Diego's data is the same as other districts in the state.

Member Beltrami asked Mr. Bell if DOF had an alternative suggestion. Mr. Bell responded that DOF would like to see claims filed with actual costs before determining a unit cost that would affect all schools in the state.

Member Steinmeier asked for staff comments. Ms. Patton stated that staff looked at the survey, and Mr. Cunningham's response. Staff noted that while most of the data included in the survey was provided by San Diego Unified School District, the types of schools surveyed were representative of schools statewide.

Mr. Bell argued that the entities required to post agendas for school site meetings might have different participation in different parts of the state. Mr. Petersen reiterated that the mandate is to type up an agenda and post it.

Member Steinmeier noted that in the alternative, we could gather six or seven years of actual costs, which is time-consuming, and could add to the cost of the program. Member Sherwood asked if we could get additional information from other claimants. Ms. Higashi responded that it is difficult to get school districts to respond, so unless the consultants could assist us in providing more data, we may not be able to get better or significantly more data.

Member Sherwood asked that in the future, larger samplings be used to support uniform cost allowances. Member Porini directed staff to work with claimants to devise a process that will result in a better sampling. Member Steinmeier asked if Member Sherwood was talking about geographic data or sheer numbers of data. Member Sherwood responded types of school districts and schools within the districts. Member Steinmeier stated that we need a policy, some standard or guideline so that claimants know what we're requesting.

Member Steinmeier moved the corrected proposed parameters and guidelines. With a second by Member Beltrami, the motion carried 5-2. Members Porini and Halsey voted "No."

## EXECUTIVE DIRECTOR'S REPORT

### Item 7 Workload, Scheduling, Local Claims Bill, Next Agenda

Paula Higashi reported the following:

- One new test claim and one new incorrect reduction claim were filed.
- One rulemaking package is still pending.
- The Senate Budget and Fiscal Review Subcommittee #4 approved the Commission's budget on March 7, 2001.
- The Local Claims Bill, SB 348 (Peace), is pending in Senate Appropriations Committee, hearing set for April 2, 2001.
- SB 982 (O'Connell) Special Education Settlement Bill, is scheduled for hearing in the Senate Education Committee on April 18, 2001.
- AB 745 (Cox) is pending in Assembly Local Government Committee, no hearing date scheduled.
- *New Staff*: Ms. Higashi introduced new staff member Patricia Rinaldi.

Member Steinmeier and Member Porini complimented staff on reducing the workload.

## OTHER BUSINESS

Chairperson Porini introduced Mr. Paige Vorhies, State Controller's Office, congratulated him on his upcoming retirement from state service, and read a Commission resolution honoring him for his many years of state service.

## CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 17526.

### PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection District et al. v. State of California, et al.*, Case Number 5078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
5. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.

6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. (CSM-365-01)
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
8. *City of San Diego v. Commission on State Mandates, et al*. Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. (CSM-96-362-01)
10. *County of San Bernardino v. Commission on State Mandates, et al*. Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *Department of Finance of the State of California v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
12. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et. al.*, Case Number SCVSS72444, in the Superior Court of the County of San Bernardino. (CSM-4473-A and 4473-B)

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i)).

## PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (CEA 3) pursuant to Government Code sections 17529 and 19889 et seq.


Chairperson Porini announced that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

## REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

## ADJOURNMENT

With no further business, the Chair adjourned the meeting at 11:16 a.m.

A handwritten signature in cursive script, appearing to read "Paula Higashi".

PAULA HIGASHI  
Executive Director

f:/meetings/minutes/2001/032901

**COMMISSION ON STATE MANDATES**

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SACRAMENTO, CA 95814

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March 30, 2001

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DMG Maximus  
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Mr. Paige Vorhies, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
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Sacramento, CA 95816

*And Interested Parties (see mailing list)*

Re: **Adopted Statewide Cost Estimate**  
*Peace Officers Procedural Bill of Rights, CSM-4499*  
City of Sacramento, Claimant

Dear Ms. Stone and Mr. Vorhies:

On March 29, 2001, the Commission on State Mandates adopted a statewide cost estimate for the above-entitled mandate according to the following schedule:

<b>Fiscal year</b>	<b>Totals</b>
1994-95	\$11,206,423
1995-96	\$13,577,396
1996-97	\$13,823,408
1997-98	\$15,817,160
1998-99	\$20,993,205
1999-2000	\$24,850,827
2000-01 (3.6%)	\$25,745,457
2001-02 (2.9%)	\$26,492,075

Total \$152,505,951

**Total Statewide Cost Estimate \$152,506,000**

\*Implicit Price Deflator, as defined by the Department of Finance.

This amount will be included in our next Report to the Legislature. If you have any questions, please call Ms. Piper Rodrian at (916) 323-3562.

Sincerely,

PAULA HIGASHI  
Executive Director

Enclosure

f:/mandates/csm4000/4499cam/sceadopttrans

MAILED: 3/30/07 FAXED: \_\_\_\_\_  
DATE: 3/30/07 INITIAL: VS  
CHRON: \_\_\_\_\_ FILE: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_

Adopted: March 29, 2001

## **Statewide Cost Estimate Calculation**

Government Code Sections 3300 through 33.10

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994;

Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and

Statutes of 1990, Chapter 675

## ***Peace Officers Procedural Bill of Rights***

### **Mandate Background**

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 33.10, known as the *Peace Officers Procedural Bill of Rights (POBAR)*.

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts\* when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

The City of Sacramento filed the test claim for POBOR on December 21, 1995. The Commission adopted the Statement of Decision on November 30, 1999 and the Parameters and Guidelines on July 27, 2000 (corrected August 17, 2000). Costs for compliance with the mandates in Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

### **Eligible Claimants**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

### **Reimbursable Activities**

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities are eligible for reimbursement:

---

<sup>1</sup> See footnote 1.

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

B. Administrative Appeal.

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and



- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription,

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - \* A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - \* A transfer of a pennant, probationary or at-will employee for purposes of punishment;
  - \* A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
  - \* Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
  - Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
  - Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and

- „ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances,
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- „ Providing notice of the adverse comment; and
  - „ Obtaining the signature of the peace officer on the adverse comment; or
  - „ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:
- „ Obtaining the signature of the peace officer on the adverse comment; or
  - „ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances,
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - „ Providing an opportunity to review and sign the adverse comment;
  - „ Providing an opportunity to respond to the adverse comment within 30 days; and
  - „ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- „ Providing notice of the adverse comment;
  - „ Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - „ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

### Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There will not be any additional late claims filed.<sup>2</sup>

### Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the State Controller's Office (SCO) for prior fiscal years by eligible claimants.<sup>3</sup>
- Staff projected totals for fiscal year (FY) 2000-01 and FY 2001-02 by using the FY 1999-00 actual claim total filed by claimants with the SCO multiplied by the implicit price deflator for that fiscal year, as forecasted by the Department of Finance.

### Staff Recommendation

Staff recommends that the Commission adopt the proposed Statewide Cost Estimate of \$152,506,000 for costs incurred in complying with the POBOR provisions.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal year	Actual Claims Filed with SCO	Totals
1994-95	165	\$11,206,423
1995-96	182	\$13,577,396
1996-97	185	\$13,823,408
1997-98	191	\$15,817,160
1998-99	194	\$20,993,205
1999-2000	201	\$24,850,827
2000-01 (3.6% <sup>*</sup> )	n/a	\$25,745,457
2001-02 (2.9% <sup>*</sup> )	n/a	\$26,492,075
Total		\$152,505,951
<b>Total Statewide Cost Estimate</b>		<b>\$152,506,000</b>

<sup>\*</sup>Implicit Price Deflator, as defined by the Department of Finance.

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$152,505,951 has been rounded to \$152,506,000.

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<sup>2</sup> Late claims filed with the Controller's Office as of March 23, 2001 are included in this estimate, minus the appropriate penalty. It is assumed that additional late claims will not be filed. If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the State Controller's Office will prorate the claims. If the deficiency funds are not appropriated in the Budget Act, the Controller will report this information to the legislative budget committees and the Commission on State Mandates. The Commission will then include the deficiency in its report to the Legislature in order to ensure that it is included in the next claims bill.

<sup>3</sup> Claims filed with State Controller's Office as of March 23, 2001.

# Commission on State Mandates

List Date: 04/03/1996

Mailing Information Other

## Mailing List

Claim Number CSM-4499 Claimant City of Sacramento Test Claim

Subject amending sections 3300-33 10.  
465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,.  
issue Peace Officers Procedural Bill of Rights

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San Bernardino CA 92415-0018

Tel: (909) 386-8850  
FAX (909) 386-8830

Claim Number

CSM-4499

Claimant

City of Sacramento Test Claim

amending sections 3300-33 10

Subject

465/76, 775, 1173, 1174, 1175/78, 1367180, 944/82, 964/83, 1165189, 67.5190,

ISSUE

Peace Officers Procedural Bill of Rights

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Claim Number

CSM-4499

Claimant

City of Sacramento Test Claim

amending sections 3300-33.10

Subject

465176, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,

Issue

Peace Officers Procedural Bill of Rights

Mr. Floyd Shimomura, Chief Counsel MIC:83

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FAX: (714) 245-8090



Claim Number

CSM-4499

Claimant

City of Sacramento Test Claim

amending sections 3300-33 10

Subject

465/76, 775, 1173, 1174, 1175/78, 1367180, 944182, 964183, 1165/89, 675/90,

Issue

Peace Officers Procedural Bill of Rights

Mr. Paige Vorhies, Bureau Chief (B-8)

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**COMMISSION ON STATE MANDATES**

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August 17, 2000

Ms. Pamela A. Stone  
Legal Counsel  
DMG Maximus  
4320 Auburn Blvd., Suite 2000  
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Mr. Paige V. Vorhies  
Chief, Bureau of Payments  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

*And Affected State Agencies and Interested Parties (See Attached Mailing List)*

**RE: Corrected Parameters and Guidelines**

*Peace Officers Procedural Bill of Rights, CSM-4499*

Government Code Sections 3300 through 3311

Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174,  
and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes  
of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter  
1165; and Statutes of 1990, Chapter 675  
City of Sacramento, Claimant

It was brought to the Commission's attention that pages five and six of the adopted Parameters and Guidelines contain two non-substantive, clerical errors. These errors are have been corrected, as reflected by the strikeout and underline. The corrected Parameters and Guidelines are enclosed.

Commission staff will begin development of a Statewide Cost Estimate. Please contact Piper Rodrian at (916) 323-8218 with questions.

Sincerely,

A handwritten signature in cursive script, reading 'Paula Higashi'.

PAULA HIGASHI  
Executive Director

c: Mailing List

Enc.: Corrected Parameters and Guidelines

f:\Mandates\csm4000\4499\pgcorrecttrans



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM – 4499

**ADOPTION OF  
PARAMETERS AND  
GUIDELINES PURSUANT  
TO GOVERNMENT CODE  
SECTION 17557 AND  
TITLE 2, CALIFORNIA  
CODE OF REGULATIONS,  
SECTION 1183.12**

(Adopted on July 27, 2000  
Corrected on August 17, 2000)

**ADOPTED PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director



## PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter  
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

### *Peace Officers Procedural Bill of Rights*

#### I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

#### II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

#### III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

---

<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

##### B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.



2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

#### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
  - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools-~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

## **V. CLAIM PREPARATION AND SUBMISSION**

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

### **SUPPORTING DOCUMENTATION**

Claimed costs shall be supported by the following cost element information:

#### **A. Direct Costs**

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

#### **1. Salaries and Benefits**

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

#### **2. Materials and Supplies**

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

#### **3. Contract Services**

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

#### 4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.

Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

#### 5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location.

Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

#### B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

### VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

### VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

#### **VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.





**COMMISSION ON STATE MANDATES**

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May 16, 2000

*Via Mail and Facsimile*

Ms. Pamela A. Stone  
Legal Counsel  
DMG Maximus  
4320 Auburn Blvd., Suite 2000  
Sacramento, California 95841

Mr. James D. Lombard  
Department of Finance  
915 L Street, Room 8020  
Sacramento, California 95814

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List – Via Mail Only)*

RE: Pre-hearing Conference, Claimant's Proposed Parameters and Guidelines  
Peace Officers Procedural Bill of Rights, CSM-4499  
Government Code Sections 3300 through 3311  
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174 and  
1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of  
1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter  
1165; and Statutes of 1990, Chapter 675  
City of Sacramento, Claimant

**Pre-hearing Conference**

The claimant has requested a pre-hearing conference regarding the proposed parameters and guidelines. The informal conference is scheduled for **Wednesday, May 24, 2000, at 2:00 p.m.**, in the conference room of the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento.

To date, the Commission has received the claimant's proposed parameters and guidelines and comments from the Department of Finance regarding the claimant's submittal. The Department of Finance has raised concerns regarding the following two areas in section IV, Reimbursable Activities, of the claimant's proposed parameters and guidelines:

- Section IV, A, 3. "Maintenance of the systems to conduct the mandated activities;" and
- Section IV, B, 1. "Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, together with the defense of same in any court proceeding."

Staff would also like to discuss the following paragraphs included in the claimant's proposed parameters and guidelines to determine if the proposed activities are consistent with, and/or reasonably related to, the test claim statutes and the Commission's Statement of Decision:

Ms. Pamela Stone  
Mr. James D. Lombard  
May 16, 2000  
Page 2

- Section IV, B, 2. "Included in the foregoing, but not limited thereto, is the review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel."
- Section IV, B, 3. "Included in the foregoing, but not limited thereto, is the review of the nature of the interrogation; review by counsel; determination of the investigating officers; redaction of the complaint for names of the complainant or other accused parties or witnesses or confidential information; and preparation and presentation to officer of notice or complaint."
- Section IV, B, 4. "Producing transcribed copies of any notes by a stenographer or tape recording at an interrogation, and reports or complaint made by investigators or other persons, except those that are deemed confidential, when requested by the officer, whether or not the investigation results in any disciplinary action. Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies."

#### Hearing Schedule

The hearing on the proposed parameters and guidelines in set for **July 27, 2000**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please note the following schedule:

June 14, 2000 (tentative)	Issue Draft Staff Analysis
June 30, 2000 (tentative)	File comments to the Draft Staff Analysis
July 14, 2000	Issue Final Staff Analysis
July 27, 2000	Commission Hearing

Please contact me at (916) 323-8215 if you have questions.

Sincerely,



CAMILLE SHELTON  
Staff Counsel

- c. Ms. Dee Contreras, Director of Labor Relations, City of Sacramento  
Mr. Edward J. Takach, Labor Relations Officer, City of Sacramento

# Commission on State Mandates

List Date: 04/03/1996

Mailing Information Letter granting extension

## Mailing List

**Claim Number** CSM-4499 **Claimant** City of Sacramento Test Claim  
amending sections 3300-3310  
**Subject** 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,  
**Issue** Peace Officers Procedural Bill of Rights

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**Claim Number**

CSM-4499

**Claimant**

City of Sacramento Test Claim

amending sections 3300-3310

**Subject**

465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,

**Issue**

Peace Officers Procedural Bill of Rights

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**Claim Number**

CSM-4499

**Claimant**

City of Sacramento Test Claim

amending sections 3300-3310

**Subject**

465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,

18

Peace Officers Procedural Bill of Rights

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Department of Employee Relations

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Division of Accounting & Reporting  
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Mr. David Wellhouse,  
Wellhouse & Associates

9175 Kiefer Blvd Suite 121      Tel: (916) 368-9244  
Sacramento CA 95826      FAX: (916) 368-5723



**COMMISSION ON STATE MANDATES**

300 I STREET, SUITE 950  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



January 12, 2000

Ms. Pamela A. Stone  
Legal Counsel  
DMG Maximus  
4320 Auburn Blvd., Suite 2000  
Sacramento, California 95841

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

RE: Claimant's Proposed Parameters and Guidelines  
Peace Officers Procedural Bill of Rights, CSM-4499  
City of Sacramento, Claimant

Dear Ms. Stone:

Your request for an extension of time to file rebuttals on the above-named test claim is approved for good cause. Therefore, please note the following schedule for comments and rebuttals:

**January 19, 2000** Comments due from state agencies and interested parties

**February 23, 2000** Rebuttals due from the claimant and interested parties

Please contact Shirley Opie at (916) 323-8211 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosure: Mailing List





# Commission on State Mandates

Originated: 04/03/1996

Mailing Information Letter granting extension

## Mailing List

**CSM/SB #** CSM-4499 **Claimant** City of Sacramento Test Claim  
**Government Code Section** amending sections 3300-3310  
**Chapters** 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,  
**Issue** Peace Officers Procedural Bill of Rights

Mr. James Apps (A-15),  
Department of Finance

915 L Street Room 8020  
SACRAMENTO CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

Mr. Don Benninghoven, Executive Director  
CCS Partnership

1100 K Street, Suite 201  
SACRAMENTO 95814

Tel: (916) 323-6011  
FAX: (916) 321-5070

Ms. Carol Berg, Ph.D,  
Education Mandated Cost Network

1121 L Street Suite 1060  
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FAX: (916) 446-2011

Mr. Allan Burdick,  
DMG-MAXIMUS

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Ms. Annette Chinn,  
Cost Recovery Systems

1750 Creekside Oaks Drive, Suite 290  
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Ms. Dee Contreras, Director of Labor Relations  
Office of Labor Relations  
City of Sacramento

921 10th Street Room 601  
SACRAMENTO CA 95814-2711

Tel: (916) 264-5424  
FAX: (916) 264-8110

Ms. Marcia C. Faulkner, Manager, Reimbursable Projects  
County of San Bernadino

Office of the Auditor/Controller  
222 W. Hospitality Lane, 4th Floor  
SAN BERNARDINO CA 92415-0018

Tel: (909) 386-8850  
FAX: (909) 386-8830

CSM/SB #

CSM-4499

Claimant

City of Sacramento Test Claim

Government Code Section

amending sections 3300-3310

Chapters

465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,

Issue

Peace Officers Procedural Bill of Rights

Ms. Ferlyn Junio,  
DMG-MAXIMUS

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FAX: (916) 485-0111

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Girard & Vinson

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Tel: (925) 746-7660  
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Mr. Andy Nichols,  
Vavrinek Trine Day & Co., LLP

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State Personnel Board

801 Capitol Mall, MS-53  
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FAX: (916) 653-8147

Mr. Floyd Shimomura, Chief Counsel MIC:83  
Department of Finance

State Capitol Room 1145  
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Mr. Edward J. Takach, Labor Relations Officer  
Department of Employee Relations

921 - 10th Street, Room 601  
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Santa Ana Police Department

City Attorney's Office  
60 Civic Center Plaza  
SANTA ANA CA 92702

Tel: (714) 245-8555  
FAX: (714) 245-8090

**CSM/SB #**

CSM-4499

**Claimant**

City of Sacramento Test Claim

**Government Code Section**

amending sections 3300-3310

**Chapters**

465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,

**Issue**

Peace Officers Procedural Bill of Rights

Mr. Paige Vorhies (B-8), Bureau Chief

State Controller's Office

Division of Accounting & Reporting

3301 C Street Suite 500

SACRAMENTO CA 95816

*Tel:* (916) 445-8756

*FAX:* (916) 323-4807

Mr. David Wellhouse,

Wellhouse & Associates

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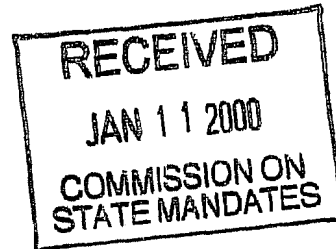




# AXIMUS

Helping Government Serve The People

January 10, 2000



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814

Re: Claimant's Proposed Parameters and Guidelines  
Peace Officers Procedural Bill of Rights, CSM - 4499  
City of Sacramento, Claimant

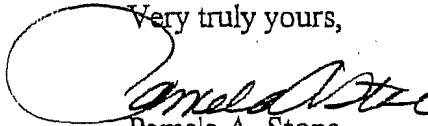
Dear Ms. Higashi:

I am in receipt of your letter of January 4, 2000, indicating that that rebuttals to any filing by state agencies or interested parties are due to be filed with the Commission by February 3, 2000.

As you are aware, I have been assisting the City of Sacramento with this filing. Unfortunately, I will be out of the country from January 13, 2000 and will not be returning to the office until February 7, 2000. Accordingly, I am requesting an extension of time to assist the City of Sacramento in filing any rebuttal which may be occasioned by state comments.

Thank you for your kind attention to my request. In the interim, if you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Pamela A. Stone  
Legal Counsel

cc: Per Attachment 1

## ATTACHMENT 1

Mr. James Apps  
Department of Finance  
915 L Street  
Sacramento, CA 95814

Mr. Don Benninghoven, Executive Director  
CCS Partnership  
1100 K Street, Suite 102  
Sacramento, CA 95814

Ms. Carol Berg, Ph.D.  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Mr. Paul Minney, Interested Party  
Girard & Vinson  
1676 N. California Blvd., Suite 450  
Walnut Creek, CA 94596

Mr. Andy Nichols  
Vavrinek, Trine, Day & Co., LLP  
8300 Fair Oaks Blvd., Suite 403  
Carmichael, CA 95608

Ms. Elsie S. Rose, Chief Counsel  
State Personnel Board  
801 Capitol Mall, MS-53  
Sacramento, CA 95814

Mr. Floyd Simomura, Chief Counsel MIC-83  
Department of Finance  
State Capitol, Rom 1145  
Sacramento, CA 95814

Mr. Edward J. Takach, Labor Relations Officer  
Department of Employee Relations  
921-10<sup>th</sup> Street, Room 601  
Sacramento, CA 95814-2711

Mr. Michael Vigliota, Paralegal  
Santa Ana Police Department  
City Attorney's Office  
60 Civic Center Plaza  
Santa Ana, CA 92702

Mr. Paige Vorhies (B-8), Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. David Wellhouse  
Wellhouse & Associates  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826





**COMMISSION ON STATE MANDATES**

1300 I STREET, SUITE 950  
SACRAMENTO, CA 95814  
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October 1, 1999

Mr. Edward J. Takach  
Labor Relations Officer  
City of Sacramento  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

*And Interested Parties (See Mailing list)*

RE: Postponement of Hearing on Proposed Statement of Decision  
Peace Officers Procedural Bill of Rights, CSM-4499  
Government Code Sections 3300 through 3311  
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174,  
and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes  
of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter  
1165; and Statutes of 1990, Chapter 675  
City of Sacramento, Claimant

On September 28, 1999, the Commission received a request from the claimant for a postponement of the hearing on the Proposed Statement of Decision. This request is granted.

Accordingly, the hearing on the Proposed Statement of Decision is set for November 18, 1999, at 9:30 a.m. in Room 437 of the State Capitol, Sacramento, California. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

Please contact Camille Shelton, Staff Counsel, with questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Paula Higashi'.  
Paula Higashi  
Executive Director

c. Pamela Stone, Legal Counsel  
Mailing List

# Commission on State Mandates

Originated: 04/03/1996

Mailing Information Postponement of Hearing on Proposed SOD

## Mailing List

**CSM/SB #** CSM-4499 **Claimant** City of Sacramento Test Claim  
**Government Code Section** amending sections 3300-3310  
**Chapters** 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/89, 675/90,  
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CSM/SB #

CSM-4499

Claimant

City of Sacramento Test Claim

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CSM/SB #

CSM-4499

Claimant

City of Sacramento Test Claim

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SACRAMENTO CA 95826

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FAX: (916) 368-5723



**AXIMUS**

*Helping Government Serve The People*

**RECEIVED**

**SEP 29 1999**

**COMMISSION ON  
STATE MANDATES**

September 28, 1999

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814

Re: Peace Officer's Bill of Rights  
No. CSM 4499  
Hearing on Statement of Decision

Dear Ms. Higashi:

At the request of the City of Sacramento, and Ms. Dee Contreras in particular, I am writing to request that the hearing on the Statement of Decision be continued until the Commission's November hearing date. Ms. Contreras telephoned me this morning to inform me that due to situations which had just arisen in her office, she will be unable to attend this Thursday's Commission meeting. She wishes to speak to the issue of the taping of interrogations and subsequent transcription as raised in the proposed Statement of Decision. She then inquired as to the date of October's meeting, and she informed me that she will be in Monterey all that day, doing a state-wide training. Accordingly, she has requested that this matter be continued until November's hearing date.

I apologize for the lateness of the request. However, as I will be out of the office tomorrow, I would appreciate your response today.

Thank you for your courtesy and cooperation.

Very truly yours,

Pamela A. Stone  
Legal Counsel

cc: Dee Contreras



## DEPARTMENT OF FINANCE

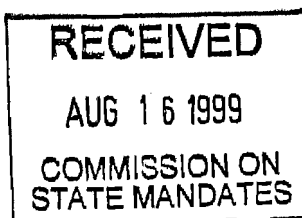
915 L STREET  
SACRAMENTO, CA 95814-3708

ORIGINAL



August 12, 1999

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814



Dear Ms. Higashi:

In conjunction with the staff of the State Personnel Board, we have reviewed the Draft Staff Analysis concerning the reimbursement of costs mandated by the "Peace Officer Procedural Bill of Rights (POBOR)," CSM-4499, which was submitted by the City of Sacramento. As the result of that review, we have concluded that while the analysis accurately identifies some activities that constitute reimbursable state mandates POBOR does not extend as far as suggested by the Draft Staff Analysis. Department of Finance and State Personnel Board staff agree that all of the activities included in Items 2 and 3 of that Analysis are reimbursable. We do, however, both believe that portions of Items 1, 4, and 5 do not constitute reimbursable state mandates because either the activity is not required by POBOR with respect to non-permanent employees or the activity is already mandated by due process and/or current law.

We question the following comments designated in the Draft Staff Analysis as reimbursable:

Item 1:

Providing the opportunity for an administrative appeal for the following disciplinary actions (Government Code section 3304, subdivision (b)):

- Discipline (as defined) received by probationary and at-will employees

*Government Code Section 3304(b) provides: "(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal." (emphasis added) Thus, POBOR does not require such appeals for probationary and at-will employees.<sup>1</sup>*

<sup>1</sup> Whether other POBOR protections apart from the right to an appeal, are to be accorded employees who do not have permanent status may be more of an open question given differences in statutory language. To the extent due process applies only where employees have a property or liberty interest, an argument can be made that other POBOR rights that are co-extensive with due process protections (e.g. right to materials upon which a disciplinary action is based, right to notice and opportunity to be heard) may also be mandated by POBOR only for those

- Transfer of permanent employees for the purposes of punishment.

*Peace officers transferred for purposes of punishment may already have the right to an administrative appeal under due process law, case law or statute. (See Ramallo SPB Dec. No. 95-19).*

Item 4:

Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances when the investigation results in (Government Code section 3303, subdivision (g)):

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected.
- A transfer of a permanent employee for the purposes of punishment.

*When an investigation results in disciplinary action, a peace officer is entitled to all of the materials upon which the action is based under the Skelly decision. State civil service probationary employees are also entitled to Skelly rights by State Personnel Board rule. Other materials are generally discoverable, at least under the law governing state civil service employees. Thus, once discipline has been initiated, the peace officer is generally entitled to request and receive transcribed copies of stenographer notes and reports and complaints made by investigators or other persons, except those deemed confidential. These situations would not constitute a reimbursable state mandate program.*

Item 5:

Performing the following activities upon receipt of an adverse comment (Government Code sections 3305 and 3306):

Pertaining to: School Districts, Counties, and Cities and Special Districts

*In reference to points (a), (b), and (c), each step is considered beyond what is required by due process. If the adverse comment can be considered a "written reprimand," however, the POBOR required "notice" and the "opportunity to respond," may already be required by due process. The extent of due process due an employee who suffers an official reprimand is not entirely clear.*

We and the staff of the State Personnel Board intend to attend the Commission's scheduled August 26 hearing on this claim, and will be available to respond to any questions regarding this letter.

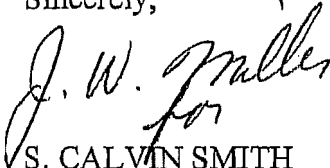
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employees who have passed probation or who can demonstrate a deprivation of a liberty interest. Other laws may accord probationary employees greater rights, however.



If you have any questions regarding this letter, please contact Don Rascon, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. W. Miller".

S. CALVIN SMITH

Program Budget Manager

## PROOF OF SERVICE

Test Claim Name: PEACE OFFICER PROCEDURAL RIGHTS

Test Claim Number: CSM-4499

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On August 12, 1999, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-8

State Controller's Office  
Division of Accounting & Reporting  
Attention: William Ashby  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29

Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

League of California Cities

Attention: Ernie Silva  
1400 K Street  
Sacramento, CA 95815

Mr. Steve Smith, CEO  
Mandated Cost Systems  
2275 Watt Avenue, Suite C  
Sacramento, CA 95825

Mr. Walter Vaughn, Executive Officer  
State Personnel Board  
801 Capitol Mall, Room 570  
Sacramento, CA 95814

Wellhouse and Associates  
Attention: David Wellhouse  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Mr. Paul Minney, Interested Party  
Girard & Vinson  
1676 N. California Boulevard, Suite 450  
Walnut Creek, CA 94596

DMG-MAXIMUS  
Attention: Allan Burdick  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Ms. Dee Contreras, Director of Labor  
Relations  
Office of Labor Relations  
9210 10<sup>th</sup> Street, Room 601  
Sacramento, CA 95814

City of Sacramento  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

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Education Mandated Cost Network  
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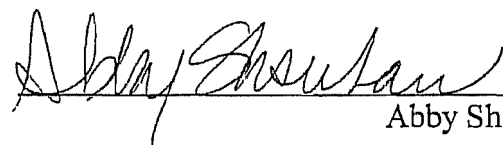
Ms. Elise Rose, Chief Counsel (E-9)  
State Personnel Board  
801 Capitol Mall, MS-53  
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Santa Ana, CA 92702

Mr. Paige Vorhies (B-8), Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 12, 1999 at Sacramento, California.

  
Abby Shawhan



## COMMISSION ON STATE MANDATES

71 STREET, SUITE 950  
SACRAMENTO, CA 95814  
(6) 323-3562



June 2, 1998

VIA FACSIMILE

Mr. Edward J. Takach  
City of Sacramento  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

Mr. Floyd D. Shimomura  
Chief Counsel  
Department of Finance  
915 L Street, 8th Floor  
Sacramento, CA 95814

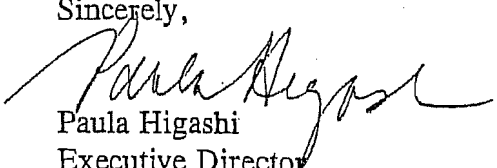
*And Interested Parties (See Mailing list)*

RE: *Revised Timeline*  
Test Claim of the City of Sacramento, CSM-4499  
Government Code Sections 3300 through 3311  
*Peace Officers Procedural Bill of Rights*

On May 29, 1998, Mr. Floyd D. Shimomura, Chief Counsel for the Department of Finance, requested a two-week extension of time to respond to the supplemental staff questions in the above-referenced matter. This request is granted. Accordingly, responses to staff's supplemental questions are due **June 17, 1998**.

Should you have any questions regarding the above, please call Camille Shelton, staff counsel.

Sincerely,

  
Paula Higashi  
Executive Director

c. mailing list

F:\mandates\Camille\4499\ltr6298

## Commission on State Mandates

### Mailing List

02-Jun-98

CSM/SB# and Claim Title CSM-4499

City of Sacramento Test Claim

Government Code Sec. amending sections 3300-3310

Chapters 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/

Originated: 03-Apr-96

Issue Peace Officers Procedural Bill of Rights

Mr. James Apps (A-15),  
Department of Finance

915 L Street 8th Floor  
SACRAMENTO CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

Mr. William Ashby (B-8),  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street Suite 500  
SACRAMENTO CA 95816

Tel: (916) 324-5922  
FAX: (916) 323-6527

Mr. Allan Burdick,  
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000  
SACRAMENTO CA 95841

Tel: (916) 485-8102  
FAX: (916) 485-0111

Ms. Dee Contreras, Director of Labor Relations  
Office of Labor Relations

9210 10th Street Room 601  
SACRAMENTO CA 95814-2711

Tel: (916) 264-5424  
FAX: (916) 264-8110

Director,  
League of California Cities

1400 K Street  
SACRAMENTO CA 95814

Tel: (916) 444-5790  
FAX: (916) 445-5796

Mr. Paul Minney, Interested Party  
Girard & Vinson

1676 N. California Blvd. Suite 450  
WALNUT CREEK CA 94596

Tel: (510) 746-7660  
FAX: (510) 935-7995

Ms. Elise Rose, Chief Counsel  
State Personnel Board

801 Capitol Mall Room 570  
SACRAMENTO CA 95814

Tel: (916) 000-0000  
FAX: (916) 000-0000

CSM/SB# and Claim Title CSM-4499

City of Sacramento Test Claim

Government Code Sec. amending sections 3300-3310

Chapters 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/

Originated: 03-Apr-96

Issue Peace Officers Procedural Bill of Rights

Mr. Steve Smith, CEO (Interested Party)  
Mandated Cost Systems

2275 Watt Avenue Suite C Tel: (916) 487-4435  
SACRAMENTO CA 95825 FAX: (916) 487-9662

Mr. Edward J. Takach,  
Department of Employee Relations

926 J Street Room 201 Tel: (916) 000-0000  
SACRAMENTO CA 95814-2716 FAX: (916) 000-0000

Mr. Walter Vaughn (E-9), Assistant Executive Director  
State Personnel Board

801 Capitol Mall Room 570 Tel: (916) 653-1028  
SACRAMENTO CA 95814 FAX: (916) 653-8147

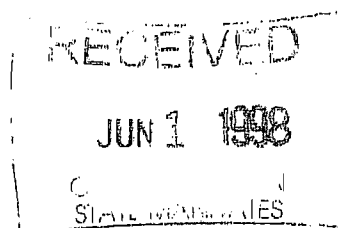
Mr. David E. Wellhouse,  
Wellhouse & Associates

9175 Kiefer Blvd Suite 121 Tel: (916) 368-9244  
SACRAMENTO CA 95826 FAX: (916) 368-5723





## DEPARTMENT OF FINANCE

915 L STREET  
SACRAMENTO, CA 95814-3706

May 29, 1998

Ms. Paula Higashi  
Executive Director  
Commission On State Mandates  
1300 I Street, Suite 950  
Sacramento, California 95814

RE: Request for Extension Of Time  
Test Claim of the City of Sacramento, CSM-4499  
Government Code Sections 3300 through 3311  
Peace Officers Procedural Bill of Rights

Dear Ms. Higashi:

Pursuant to Sections 1181.1, subdivision @, 1181.2 and 1183.01, subdivision © of the Commission's regulations, I am requesting a two-week extension of time within which to respond to supplemental staff questions in the aforesaid matter. The response is due on June 3, 1998, and I would like until June 17, 1998 to respond. The reasons for this request are that I have recently been appointed Chief Counsel for the Department of Finance and was not able to meet with the State Personnel Board staff until today to coordinate the State's response. We ask the Commission's indulgence and appreciate any extension of time which it may grant.

Sincerely,

A handwritten signature in cursive script that reads 'Floyd D. Shimomura'.

Floyd D. Shimomura  
Chief Counsel

## DEPARTMENT OF FINANCE

915 L STREET  
SACRAMENTO, CA 95814-3706

May 29, 1998

Ms. Paula Higashi  
Executive Director  
Commission On State Mandates  
1300 I Street, Suite 950  
Sacramento, California 95814

RE: Request for Extension Of Time  
Test Claim of the City of Sacramento, CSM-4499  
Government Code Sections 3300 through 3311  
Peace Officers Procedural Bill of Rights

Dear Ms. Higashi:

Pursuant to Sections 1181.1, subdivision @, 1181.2 and 1183.01, subdivision © of the Commission's regulations, I am requesting a two-week extension of time within which to respond to supplemental staff questions in the aforesaid matter. The response is due on June 3, 1998, and I would like until June 17, 1998 to respond. The reasons for this request are that I have recently been appointed Chief Counsel for the Department of Finance and was not able to meet with the State Personnel Board staff until today to coordinate the State's response. We ask the Commission's indulgence and appreciate any extension of time which it may grant.

Sincerely,

A handwritten signature in cursive script that reads "Floyd D. Shimomura".

Floyd D. Shimomura  
Chief Counsel

## COMMISSION ON STATE MANDATES

1300 I STREET, SUITE 950  
SACRAMENTO, CA 95814  
(916) 323-3562



April 27, 1998

Mr. Edward J. Takach  
City of Sacramento  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

Mr. Jim Apps  
Department of Finance  
915 L Street, 8th Floor  
Sacramento, CA 95814

*And Interested Parties (See Mailing list)*

RE: *Revised Timeline for Supplemental Responses, Tentative Hearing Date*  
Test Claim of the City of Sacramento, CSM-4499  
Government Code Sections 3300 through 3311  
*Peace Officers Procedural Bill of Rights*

**Supplemental Responses to Staff Questions**

The claimant and the Department of Finance have requested an extension of time to file supplemental responses to staff's questions issued on March 18, 1998. These requests are granted. Accordingly, supplemental responses to staff's questions are due **June 3, 1998**.

**Tentative Hearing Date**

The hearing on this item is tentatively set for **August 20, 1998**, at 9:30 a.m. in Room 437 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear. If you would like to request postponement of the hearing, please refer to section 1183.01 (c) of the Commission's regulations.

Should you have any questions regarding the above, please call Camille Shelton, Staff Counsel.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paula Higashi".  
Paula Higashi  
Executive Director

c. Mailing List

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**FILE COPY**

## Commission on State Mandates

### Mailing List

27-Apr-98

**CSM/SB# and Claim Title** CSM-4499 City of Sacramento Test Claim

**Government Code Sec.** amending sections 3300-3310

**Chapters** 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/

**Originated:** 03-Apr-96

**Issue** Peace Officers Procedural Bill of Rights

Mr. James Apps (A-15),  
Department of Finance

915 L Street 8th Floor  
SACRAMENTO CA 95814

**Tel:** (916) 445-8913  
**FAX:** (916) 327-0225

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3301 C Street Suite 500  
SACRAMENTO CA 95816

**Tel:** (916) 324-5922  
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Director,  
League of California Cities

1400 K Street  
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**Tel:** (916) 444-5790  
**FAX:** (916) 445-5796

Mr. Paul Minney, Interested Party  
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2275 Watt Avenue Suite C  
SACRAMENTO CA 95825

**Tel:** (916) 487-4435  
**FAX:** (916) 487-9662

CSM/SB# and Claim Title CSM-4499

City of Sacramento Test Claim

Government Code Sec. amending sections 3300-3310

Chapters 465/76, 775, 1173, 1174, 1175/78, 1367/80, 944/82, 964/83, 1165/

Originated: 03-Apr-86

Issue Peace Officers Procedural Bill of Rights

Mr. Edward J. Takach,  
Department of Employees Relations

926 J Street Room 201  
SACRAMENTO CA 95814-2716

Tel: (916) 000-0000  
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Mr. Walter Vaughn (E-9), Assistant Executive Director  
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Wellhouse & Associates

9175 Kiefer Blvd Suite 121  
SACRAMENTO CA 95826

Tel: (916) 368-9244  
FAX: (916) 368-5723



## COMMISSION ON STATE MANDATES

J STREET, SUITE 960  
SACRAMENTO, CA 95814  
323-3562



August 6, 1997

Ms. Dee Contreras  
City of Sacramento  
Department of Employee Relations  
926 - J Street, Room 201  
Sacramento, CA 95814-2716

And Interested Parties (Attached List)

RE: *Peace Officers Procedural Bill of Rights* - CSM-4499  
Government Code Sections 3300-3311, added and amended by Chapter 465,  
Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter  
405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of  
1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter  
675, Statutes of 1990.

Dear Ms. Contreras:

The Commission on State Mandates requests the status of the additional information you agreed to provide for the City of Sacramento test claim, as identified in our January 31, 1997 letter. It was our understanding you needed additional time to submit information documenting the difference between *Skelly v. State Personnel Board*, (1975) 15 Cal.3d 194 and Peace Officers Bill of Rights procedures.

We will proceed with the staff analysis based on the available test claim information if the subject documentation is not received by September 5, 1997.

If there are any questions or concerns about this matter please contact Jolene Mado-Eveland at 323-3562.

Sincerely,

A handwritten signature in cursive script, reading 'Paula Higashi'.

PAULA HIGASHI  
Executive Director

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In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 773, 1173, 1174, 1175, Statutes of 1978; Chapter 403, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995.

By the City of Sacramento.

No. CSM-4499

Peace Officers Bill of Rights

Timelines and Hearing

AGREEMENT

The undersigned parties to this test claim agree to the following:

1. An extension of time to March 24, 1997, for the claimant to send requested documents identifying the City of Sacramento's process in utilizing the Peace Officers Procedural Bill of Rights. Accordingly, the statutory timeframe for processing this test claim is tolled until March 24, 1997 or until the date the claimant's submission is received by the Commission on State Mandates.
2. The dates specified below are applicable, assuming the submission is received by March 24, 1997. They will be appropriately adjusted should the submission be received after that date.
  - a. Preparation and distribution of the draft staff analysis by April 14, 1997.
  - b. Comments on the draft staff analysis may be filed by April 25, 1997.
  - c. Distribution of the final staff analysis by May 16, 1997.
  - d. Postponement of the hearing from May 27, 1997 to June 26, 1997.

By: Lee Contreras  
Dee Contreras  
City of Sacramento

Date: 3/17/97

By: James M. O'Neil  
Department of Finance

Date: 3/19/97

By: Paula Hignish  
Paula Hignish, Interim Executive Director  
Commission on State Mandates

Date: 3/15/97

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TOTAL P.02

RECEIVED

FEB 11 1997

COMMISSION ON  
STATE MANDATES

In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

#### AGREEMENT

The undersigned parties to this test claim agree to the following:

1. An extension of time to March 3, 1997, for the claimant to send requested documents identifying the City of Sacramento's process in utilizing the Peace Officers Procedural Bill of Rights.
2. Preparation and distribution of the draft staff analysis by April 4, 1997.
3. Comments on the draft staff analysis may be filed by April 25, 1997.
4. Distribution of the final staff analysis by May 6, 1997.
5. Postponement of the hearing from March 27, 1997 to May 27, 1997.

By:

Dee Contreras

Dee Contreras  
City of Sacramento

Date:

2/3/97

By:

Department of Finance

Date:

By:

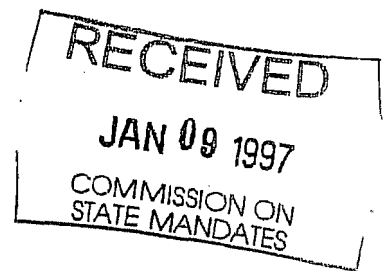
Kirk G. Stewart

Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date:

1-31-97

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In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

#### AGREEMENT

The undersigned parties to this test claim agree to the following:

1. An extension of time from August 16, 1996 to December 6, 1996, for the claimant to file its rebuttal to the Department of Finance's response.
2. Convening a pre-hearing conference in mid-January 1997.
3. Preparation and distribution of the draft staff analysis by February 13, 1997.
4. Comments on the draft staff analysis may be filed by March 6, 1997.
5. Distribution of the final staff analysis by March 17, 1997.
6. Postponement of the hearing from January 30, 1997 to March 27, 1997.

By: Dee Contreras  
Dee Contreras  
City of Sacramento

Date: 1/7/97

By: \_\_\_\_\_  
Department of Finance

By: Kirk G. Stewart  
Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date: \_\_\_\_\_

Date: 1-10-97

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**In Re Test Claim on:**

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

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By: \_\_\_\_\_

Dee Contreras  
City of Sacramento

Date: \_\_\_\_\_

By: \_\_\_\_\_

Department of Finance

Date: 1/2/97

By: \_\_\_\_\_

Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date: \_\_\_\_\_

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In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

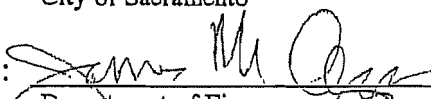
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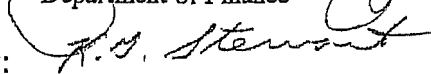
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5. Postponement of the hearing from March 27, 1997 to May 27, 1997.

By: \_\_\_\_\_  
Dee Contreras  
City of Sacramento

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Department of Finance

Date: 2-5-97

By:  \_\_\_\_\_  
Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date: 1-31-97

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MAILING LIST

**CSM-4499 - CITY OF SACRAMENTO TEST CLAIM**

Chapter 465/76, 775, 1173, 1174, 1175/78, 405/79, 1367/80, 944/82, 964/83, 1165/89, 675/90,  
adding and amending sections 3300-3310 of the Government Code.

***Peace Officers Procedural Bill of Rights***

Dee Contreras  
City of Sacramento  
Director of Labor Relations  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716  
Tel: 916/264-5424  
Fax: 916/264-8110

Assistant Executive Director  
State Personnel Board  
801 Capitol Mall, Room 570  
Sacramento, CA 95814  
Tel: 916/653-1028  
Fax: 916/653-8147

League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814  
Tel: 916/444-5790  
Fax: 916/658-8240

**Mr. John Adams (A-15)**

Department of Finance  
915 L Street, 8th floor  
Sacramento, CA 95814  
Tel: 916/445-8913  
Fax: 916/327-0225

Mr. John Korach (B-8)  
Div. Of Accounting & Reporting  
State Controller's Office  
3301 C Street Room 501  
Sacramento, CA 95816  
Tel: 916/323-2849  
Fax: 916/323-4807

Mr. Alan Burdick  
David M. Griffith & Associates, Ltd  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841  
Tel: 916/485-8102  
Fax: 916/485-0111

Mr. Walter Vaughn

In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

### AGREEMENT

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  - c. Distribution of the final staff analysis by May 16, 1997.
  - d. Postponement of the hearing from May 27, 1997 to June 26, 1997.

By: \_\_\_\_\_  
Dee Contreras  
City of Sacramento

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department of Finance

Date: \_\_\_\_\_

By: Paula Higashi  
Paula Higashi, Interim Executive Director  
Commission on State Mandates

Date: 3/15/97

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## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
323-3562



January 31, 1997

City of Sacramento  
Department of Employee Relations  
Ms. Dee Contreras  
926 J Street, Room 201  
Sacramento, CA 95814-2716

And Interested Parties (See attached list.)

RE: CSM-4499  
*Peace Officers Bill of Rights*

Dear Ms. Contreras:

The Commission staff found the pre-hearing meeting on January 27, 1997 informative. Thank you, and Ed Takach, for your attendance and your insights.

An agreement was made at the pre-hearing that City of Sacramento would send to the Commission a procedural flow-chart or other document to give a specific description of the activities outlined in the test claim identifying the differences between Skelly v. State Personnel Board procedures and the procedures established by the Peace Officers Bill of Rights legislation. In order to have adequate time to receive the requested items, develop a draft staff analysis and send the analysis to interested parties for review, and prepare a final staff analysis, it is no longer possible for this test claim to be scheduled for the March 27, 1997 hearing. Therefore, to ensure adequate time to process the aforementioned items concerning this test claim, the Commission on State Mandates requests your signature on the enclosed agreement. This agreement addresses the following issues:

1. The draft staff analysis of this test claim cannot be prepared until after receipt of the items requested at the pre-hearing conference. The City of Sacramento will send the requested items by March 3, 1997.
2. There must be adequate comment and response time regarding the draft staff analysis in order to prepare the final staff analysis for the May 27, 1997 hearing.

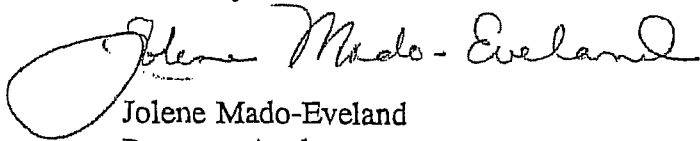
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City of Sacramento  
December 23, 1996  
Page 2

Therefore, for the reasons stated above, the Commission proposes postponement of the hearing to May 27, 1997. Your signature on the enclosed agreement between the City of Sacramento, the Department of Finance, and the Commission on State Mandates would allow the Commission to grant the extension of time for preparation of the draft staff analysis after receipt of requested items from City of Sacramento, and postpone the hearing on this test claim to May 27, 1997.

Thank you for your assistance in this matter and please call me at (916) 323-8221 if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Jolene Mado-Eveland". The signature is written in dark ink and is positioned above the printed name and title.

Jolene Mado-Eveland  
Program Analyst

c: Interested Parties (Attached list.)

Enclosures: Agreement and self-addressed return envelope

In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

#### AGREEMENT

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4. Distribution of the final staff analysis by May 6, 1997.
5. Postponement of the hearing from March 27, 1997 to May 27, 1997.

By: \_\_\_\_\_  
Dee Contreras  
City of Sacramento

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department of Finance

Date: \_\_\_\_\_

By: K. G. Stewart  
Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date: 1-31-97

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## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
8) 323-3562



January 8, 1996

Dee Contreras  
Labor Relations Director  
City of Sacramento  
926 J Street, Room 201  
Sacramento, CA 95814

RE: CSM-4499  
*Peace Officer Bill of Rights*

Dear Ms. Contreras,

The Commission on State Mandates has received your letter of request for continuance from the January 30, 1997 date to hear the subject test claim. On December 23, 1997 we sent a form requesting your signature in agreement with the continuance of the Commission hearing date, and would appreciate your signing and returning the form upon receipt of this letter.

This is also confirmation of the requested pre-hearing meeting for discussion of *Peace Officer Bill of Rights* test claim with interested parties. We have scheduled the pre-hearing meeting for January 27, 1997, 10:00 a.m. to Noon in our new office at the Attorney General Building, 1300 I Street, Suite 950, CSM Conference Room. CSM current phone number will remain the same after January 24, 1997.

If there are any questions concerning this letter please contact me at 323-3562.

Sincerely,

A handwritten signature in cursive script that reads 'Jolene Mado-Eveland'.

Jolene Mado-Eveland  
Program Analyst

c: Interested Parties Mailing list

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## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
6) 323-3562



December 23, 1996

City of Sacramento  
Department of Employee Relations  
Ms. Dee Contreras  
926 J Street, Room 201  
Sacramento, CA 95814-2716

And Interested Parties (See attached list.)

RE: CSM-4499  
*Peace Officers Bill of Rights*

Dear Ms. Contreras:

It is no longer possible for this test claim to be scheduled for the January 1997 hearing. Therefore, to ensure adequate discussion and review time on this test claim, the Commission on State Mandates requests your signature on the enclosed agreement. This agreement addresses the following issues:

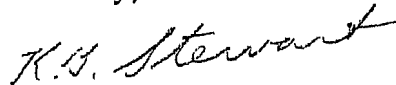
1. The City of Sacramento filed its rebuttal 112 days after the due date. However, no request for extension of time was filed by the claimant. Therefore, the Commission proposes approval of this "lost period" of time, as if an extension had been timely filed.
2. Receipt of the City of Sacramento's rebuttal during December, makes it difficult and inconvenient for scheduling of your requested pre-hearing conference on the test claim for all parties, especially the Department of Finance; the earliest possible date for a pre-hearing conference is mid-January 1997.
3. The draft staff analysis of this test claim cannot be prepared until after the pre-hearing conference.
4. There must be adequate comment and response time regarding the draft staff analysis in order to prepare the final staff analysis for the hearing.

City of Sacramento  
December 23, 1996  
Page 2

Therefore, for the reasons stated above, the Commission proposes postponement of the hearing to March 27, 1997. Your signature on the enclosed agreement between the City of Sacramento, the Department of Finance, and the Commission on State Mandates would allow the Commission to grant the extension of time for filing of claimant's rebuttal, set the pre-hearing conference, and postpone the hearing on this test claim to March 27, 1997.

Thank you for your assistance in this matter and please call Jolene Mado-Eveland at (916) 323-3562 if you have any questions or concerns.

Sincerely,



Kirk G. Stewart  
Executive Director

c: Interested Parties (Attached list.)

Enclosures: Agreement and self-addressed return envelope



In Re Test Claim on:

Sections 3300-3311, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, filed on December 21, 1995,

By the City of Sacramento.

No. CSM-4499

*Peace Officers Bill of Rights*

Timelines and Hearing

#### AGREEMENT

The undersigned parties to this test claim agree to the following:

1. An extension of time from August 16, 1996 to December 6, 1996, for the claimant to file its rebuttal to the Department of Finance's response.
2. Convening a pre-hearing conference in mid-January 1997.
3. Preparation and distribution of the draft staff analysis by February 13, 1997.
4. Comments on the draft staff analysis may be filed by March 6, 1997.
5. Distribution of the final staff analysis by March 17, 1997.
6. Postponement of the hearing from January 30, 1997 to March 27, 1997.

By: \_\_\_\_\_  
Dee Contreras  
City of Sacramento

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department of Finance

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kirk G. Stewart, Executive Director  
Commission on State Mandates

Date: \_\_\_\_\_

f:\mandates\jme\forms\ppstip





OFFICE OF  
LABOR RELATIONS

CITY OF SACRAMENTO  
CALIFORNIA

926 J STREET  
ROOM 201  
SACRAMENTO, CA  
95814-2716

December 20, 1996

PH 916-264-5424  
FAX 916-264-8110

Ms. Jolene Mado-Eveland  
Commission on State Mandates  
1414 K Street Suite 315  
Sacramento, CA 95814

Dear Ms. Mado-Eveland:

This is to confirm our discussion regarding a continuance until mid-January 1997 in the scheduling of the City of Sacramento's claim for costs associated with the implementation of the Police Officers Bill of Rights. Thank you for your assistance in this matter.

Sincerely,

Dee Contreras  
Labor Relations Director

cc: Allan Burdick

REC'D

DEC 24 1996

RECEIVED  
DEC 24 1996

## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
CRAMENTO, CA 95814  
6) 323-3562



November 19, 1996

Ms. Dee Contreras  
Director of Labor Relations  
Department of Employee Relations  
City of Sacramento  
916 J Street, Room 201  
Sacramento, CA 95814-2716

Re: CSM-4499 - Peace Officer Bill of Rights

Dear Ms. Contreras:

The Commission on State Mandates received your test claim on December 21, 1995, and a letter confirming completeness was sent April 26, 1996. Requested written agency recommendations were received July 17, 1996 from the Department of Finance (DOF), but we have not received your rebuttal to DOF's recommendation. In order to decide the reimbursable state mandated program issue, the Commission requests that you submit your rebuttal to DOF's recommendation, or let us know if no rebuttal will be sent. You also may request a continuance of the scheduled Commission hearing date, or request that this test claim be placed on inactive status. We would appreciate a prompt reply upon your receipt of this letter.

In the interest of meeting statutory timelines, Commission staff will need to proceed with the test claim analysis based on the current available information if no response is forthcoming.

If you have any questions concerning this matter, please contact Ms. Jolene Mado-Eveland at (916) 323-3562.

Sincerely,

A handwritten signature in cursive script that reads "K.G. Stewart".

Kirk G. Stewart  
Executive Director

cc Mailing list

f:\mandates\jme\4499\request.doc



## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
161 323-3562



April 26, 1996

Ms. Dee Contreras  
Director of Labor Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

RE: CSM-4499

Sections 3300-3311, Chapter 9.7, Division 4, Title 1, of the Government Code, added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990.  
*Peace Officers Procedural Bill of Rights*

Dear Ms. Contreras:

The Commission on State Mandates (Commission) received your test claim filing on December 21, 1995, and had requested additional information on statutory code sections within the chaptered code in order to determine your test claim complete. We received the requested information and this letter is to confirm our review and the completeness of your test claim.

The test claim requests that the Commission consider whether the provisions of Government Code section 3300-3311, Chapter 9.7, Division 4, Title 1, of Government Code as added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, 1175, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, result in a reimbursable state mandated program.

The test claim is set for hearing on August 29, 1996, at 10:00 a.m. in Room 444, State Capitol, Sacramento, California.

In order to decide on the reimbursable state mandated program issue, the Commission requests that all interested parties receiving this letter analyze the merits of the claim and make recommendations on its validity under the provisions of Government Code section 17500 through 17630.

Some areas that state agencies should consider when analyzing the claim are:

- 1) Do the test claim provisions as listed above result in a new program or higher level of service in an existing program upon counties within the meaning of Government Code section 17514 and section 6, article XIII B of the California Constitution? If so, are there associated costs mandated by the state that are reimbursable?
- 2) Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the test claim impose a reimbursable state mandated program upon school districts?

State and local agency recommendations should include whether a representative will appear at the hearing. Some agencies may be required to send a representative. All interested parties' recommendations will be immediately forwarded to the claimant upon receipt by this office. Please be advised that, during the hearing, a court reporter will be present and a tape recording will be made.

Written agency recommendations must be received by this office no later than ~~May 31, 1996~~, so the claimant will have sufficient time to respond to any issues raised. However, ~~June 28~~ recommendations will be accepted by the Commission at any time prior to the May 31, 1996 due date. Rebuttals from the **claimant** must be submitted by ~~July 14, 1996~~. All testimonial and documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized or competent to do so, and the basis for authorization or competence must be stated in the declaration.

*Called  
+ discussed  
De  
She agreed  
5/21/96*

Based upon information provided by all interested parties, the Commission will determine whether the claim meets the statutory requirements for a reimbursable state mandated program. Should the Commission determine that a reimbursable state mandate exists, parameters and guidelines for reimbursing all eligible local entities will be developed. In accordance with the Commission's regulations, the claimant will be responsible for providing the first draft of the parameters and guidelines.

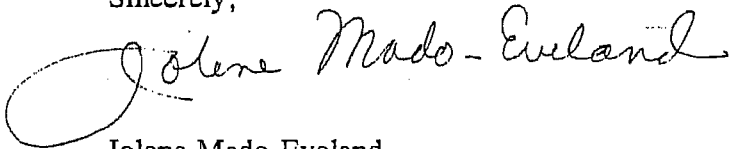
The claimant and state agencies should note that they are required to submit all information, including arguments, declarations, laws, and evidence being relied upon, to support their position by the due dates shown. If substantial new evidence or argument, either oral or written, is presented at the hearing, the test claim may be continued to a subsequent hearing



date to allow the opposing party and Commission staff to review the new information.

If you have any further questions or concerns, please contact me at 916-323-3562.

Sincerely,

A handwritten signature in cursive script that reads "Jolene Mado-Eveland". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Jolene Mado-Eveland  
Program Analyst

Enclosure: Test claim of City of Sacramento

cc w/enc: Mr. Jim Apps, Department of Finance  
(Recommendation due: 5/31/96)

League of California Cities

Mr. Glenn Engle, State Controller's Office

f:\mandates\4499\tcack





DEPARTMENT OF  
EMPLOYEE RELATIONS

CITY OF SACRAMENTO  
CALIFORNIA

March 8, 1996

926 J STREET  
ROOM 201  
SACRAMENTO, CA  
95814-2716

PH 916-264-5424  
FAX 916-264-8110

Mr. Kirk G. Stewart  
Executive Director  
Commission on State Mandates  
1414 "K" Street, Suite 315  
Sacramento, CA 95814

Re: CSM-4499 - City of Sacramento  
Peace Officers Procedural Bill of Rights

Dear Mr. Stewart:

The purpose of this letter is to provide the Commission on State Mandates with the information needed to complete the City's test claim. Your letter of January 26, 1996, requested the City provide you with the particular statutory code sections added or amended with each chaptered bill included in our test claim on the Peace Officers Procedural Bill of Rights. Based on your telephone conversations with Allan Burdick, Director of the California Cities SB 90 Service, I understand that the following statement will meet all requirements to comply with your request:

All provisions of the Public Safety Officers Procedural Bill of Rights Act are contained in Sections 3300-3311, Chapter 9.7, Division 4, title 1, of the Government Code. The Public Safety Officers Procedural Bill of Rights was added to the Government Code in 1976 and amended in 1977, 1978, 1979, 1980, 1982, 1983, 1989, 1990, and 1994. All of the statutes listed in the City of Sacramento's test claim alleging the Public Safety Officers Procedural Bill of Rights to be a reimbursable state mandated local program added or amended the various provisions of this Act.

To facilitate your review, I have asked Mr. Burdick to provide your staff with a copy of the March 1995 edition of the California Public Employee Relations "Pocket Guide to the Public Safety Officers Procedural Bill of Rights Act". The pocket guide provides a description of the basic rights and obligations conferred by the statute and a guide to the case law that has arisen since passage in 1976.

If you should need any additional information to complete the test claim, please let me know.

Sincerely,

Dee Contreras  
Labor Relations Director  
1403



## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
(916) 323-3562



January 26, 1996

Ms. Dee Contreras  
Director of Labor Relations  
Department of Employee Relations  
926 J Street, Room 201  
Sacramento, CA 95814-2716

RE: CSM-4499 - City of Sacramento  
Chapter 465, Statutes of 1976; Chapter 775, Statutes of 1976; Chapter 1173, Statutes of 1976; Chapter 1174, Statutes of 1976; Chapter 1175, Statutes of 1978, Chapter 405, Statutes of 1979, Chapter 1367, Statutes of 1980; Chapter 944, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; Chapter 675, Statutes of 1990, adding and amending sections 3300-3310 of the Government Code.  
*Peace Officers Procedural Bill of Rights*

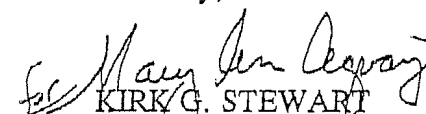
Dear Ms. Contreras:

The Commission on State Mandates (Commission) received your test claim filing in this office on December 21, 1995, and determined that the submission was incomplete. In order for your test claim to be determined complete, the particular statutory code sections added or amended within each chaptered bill must be identified. Upon receipt of the additional information, your test claim will be determined complete and a hearing date will be set.

Please note that if a completed test claim is not received by the Commission within one hundred and twenty (120) calendar days from the date the incomplete claim was returned, the original test claim filing date can be disallowed, and a new test can be accepted on the same statute or executive order. A disallowance of the original filing date may impact the number of fiscal years eligible for reimbursement should the Commission determine a mandate exists. A hearing date will be set up upon receipt of a completed test claim.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

  
KIRK G. STEWART  
Executive Director



# California State Auditor

BUREAU OF STATE AUDITS

## **State Mandates:**

*The High Level of Questionable Costs  
Claimed Highlights the Need for Structural  
Reforms of the Process*



October 2003  
2003-106

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# CALIFORNIA STATE AUDITOR

---

ELAINE M. HOWLE  
STATE AUDITOR

STEVEN M. HENDRICKSON  
CHIEF DEPUTY STATE AUDITOR

October 15, 2003

2003-106

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning California's state mandate process and local entity claims submitted under the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates. This report concludes that the costs for both mandates are significantly higher than what the Legislature initially expected. In addition, we found that the local entities we reviewed claimed costs under the peace officer rights mandate for activities that far exceeded the Commission on State Mandates' (Commission) intent. Further, claimants under both mandates lacked adequate supporting documentation and made errors in calculating costs claimed.

The problems we identified highlight the need for some structural reforms of the mandate process. Specifically, the mandate process does not afford the State Controller's Office the opportunity to perform a field review of the first set of claims for new mandates early enough to identify potential claiming problems. In addition, the Commission could improve its reporting of statewide cost estimates to the Legislature by disclosing limitations and assumptions related to the claims data it uses to develop the estimates. Finally, Commission staff have indicated that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future due to an increase in caseload and cutbacks in staffing.

Respectfully submitted,

ELAINE M. HOWLE  
State Auditor

---

BUREAU OF STATE AUDITS

555 Capitol Mall, Suite 300, Sacramento, California 95814 Telephone: (916) 445-0255 Fax: (916) 327-0019 [www.bsa.ca.gov/bsa](http://www.bsa.ca.gov/bsa)

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# SUMMARY

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## Audit Highlights . . .

*Our review of the Peace Officers Procedural Bill of Rights (peace officer rights) and the animal adoption mandates found that:*

- ✓ *The costs for both mandates are significantly higher than what the Legislature expected.*
- ✓ *The local entities we reviewed claimed costs under the peace officer rights mandate for activities that far exceed the Commission on State Mandates' (Commission) intent.*
- ✓ *The local entities we reviewed lacked adequate supporting documentation for most of the costs claimed under the peace officer rights mandate and some of the costs claimed under the animal adoption mandate.*
- ✓ *Structural reforms are needed to afford the State Controller's Office an opportunity to perform a field review of initial claims for new mandates early enough to identify potential problems.*
- ✓ *Commission staff have indicated that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future due to an increase in caseload and a decrease in staffing.*

## RESULTS IN BRIEF

Although the Legislature did not anticipate high costs, local entities have filed significant claims with the State for the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates. Through fiscal year 2001–02, local entities submitted claims to the State Controller's Office (Controller) totaling about \$223.5 million for the peace officer rights mandate and \$60.8 million for the animal adoption mandate. The State actually paid \$50 million of the peace officer rights mandate claims but has not paid any of the animal adoption mandate claims. We question a large portion of the costs claimed by four local entities that received \$31 million of the \$50 million paid, and we are concerned that the State already may have paid more than some local entities are entitled to receive under the peace officer rights mandate.

The Commission on State Mandates (Commission) issued guidance specifying the particular activities for which local entities could claim reimbursement. Along with claiming instructions the Controller issued, local entities are required to follow the Commission's guidance when completing and filing their claims. However, based on our review of selected claims under each mandate, we question a high proportion of the costs claimed under the peace officer rights mandate and note lesser problems with the animal adoption claims. In particular, we question \$16.2 million of the \$19.1 million in direct costs that four local entities claimed under the peace officer rights mandate for fiscal year 2001–02 because they included activities that far exceed the Commission's intent. Although we noted limited circumstances in which the Commission's guidance could have been enhanced, the primary factor contributing to this condition was that local entities and their consultants broadly interpreted the Commission's guidance to claim reimbursement for large portions of their disciplinary processes, which the Commission clearly did not intend.

In addition, we question \$18.5 million of the \$19.1 million in direct costs they claimed under the peace officer rights mandate because of inadequate supporting documentation. The local entities based the amount of time they claimed on interviews

and informal estimates developed after the related activities were performed instead of recording the actual staff time spent on reimbursable activities or developing an estimate based on an acceptable time study. Additionally, we noted several errors in calculations of costs claimed under the peace officer rights mandate. Although we generally focused on fiscal year 2001–02 claims, the largest error we noted was in the fiscal year 2000–01 claim of one local entity. It overstated indirect costs by about \$3.7 million because it used an inflated rate and applied the rate to the wrong set of costs in determining the amount it claimed. We noted two other errors related to fiscal year 2001–02 claims involving employee salary calculations and claiming costs for processing cases that included those of civilian employees, resulting in a total overstatement of \$377,000.

We also found problems with the animal adoption claims. The four local entities we reviewed could not adequately support \$979,000 of the \$5.4 million they claimed for fiscal year 2001–02. In some instances, this lack of support related to the amount of staff time spent on activities. In another instance, a local entity could not adequately separate the reimbursable and nonreimbursable costs it incurred under a contract with a nonprofit organization that provided shelter and medical services for the city's animals.

In addition, we noted numerous errors in calculations the four local entities performed to determine the costs they claimed under the animal adoption mandate for fiscal year 2001–02. Although these errors caused both understatements and overstatements, the four claims were overstated by a net total of about \$675,000. Several errors resulted from using the wrong numbers in various calculations involving animal census data.

Although the guidance related to the animal adoption mandate generally is adequate, the Commission's formula for determining the reimbursable amount of the costs of new facilities does not isolate how much of a claimant's construction costs relate to holding animals for a longer period of time. The two local entities we audited that claimed costs for acquiring space in fiscal year 2001–02 used the current formula appropriately to prorate their construction costs. However, one of them needed space beyond that created by the mandate; as a result, the costs it claimed probably are higher than needed to comply with the mandate.

The problems we identified highlight the need for some structural reforms of the mandate process. For example, it is difficult to gauge the clarity of the Commission's guidance and the accuracy of costs claimed for new mandates until claims are subjected to some level of field review. However, the mandate process does not afford the Controller an opportunity to perform a field review of the claims for new mandates early enough to identify potential claiming problems.

Also, inherent limitations in the process the Commission uses to develop statewide cost estimates for new mandates result in underestimates of mandate costs. Even though Commission staff base statewide cost estimates for mandates on the initial claims local entities submit to the Controller, these entities are allowed to submit late or amended claims long after the Commission adopts its estimate. The Commission could disclose this limitation in the statewide cost estimates it reports to the Legislature by stating what assumptions were made regarding the claims data. In addition, Commission staff did not adjust for some anomalies in the claims data they used to develop the cost estimate for the animal adoption mandate that resulted in an even lower estimate.

Finally, Commission staff indicated that the Commission has developed a significant caseload and has experienced cutbacks in staffing because of the State's fiscal problems. As a result, staff state that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future. This will cause further delays in the mandate process in general, including determination of the potential cost of new mandates.

## **RECOMMENDATIONS**

To ensure that local entities receive reimbursement only for costs associated with the increased holding period for eligible animals, the Legislature should direct the Commission to amend the parameters and guidelines of the animal adoption mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space. If the Commission amends these parameters and guidelines, the Controller should amend its claiming instructions accordingly and require local entities to amend claims already filed.

To identify potential claiming errors and to ensure that costs claimed are consistent with legislative and Commission intent, the Controller should perform a field review of initial reimbursement claims for selected new mandates. In addition, the Commission should work with the Controller, other affected state agencies, and interested parties to implement appropriate changes to the regulations governing the mandate process, allowing the Controller sufficient time to perform these field reviews and identify any inappropriate claiming as well as to suggest any needed changes to the parameters and guidelines before the development of the statewide cost estimate and the payment of claims. If the Commission and the Controller find they cannot accomplish these changes through the regulatory process, they should seek appropriate statutory changes.

To ensure that local entities have prepared reimbursement claims for the peace officer rights mandate that are consistent with the Commission's intent, the Controller should audit the claims already paid, paying particular attention to the types of problems described in this report. If deemed appropriate based on the results of its audit, the Controller should request that the Commission amend the parameters and guidelines to address any concerns identified, amend its claiming instructions, and require local entities to adjust claims already filed. The Controller should seek any statutory changes needed to accomplish the identified amendments and to ensure that such amendments can be applied retroactively.

To ensure that local entities develop and maintain adequate support for costs claimed under all state mandates, the Controller should issue guidance on what constitutes an acceptable time study for estimating the amount of time employees spend on reimbursable activities and under what circumstances local entities can use time studies.

All local entities that have filed, or plan to file, claims for reimbursement under the peace officer rights or animal adoption mandate should consider carefully the issues raised in this report to ensure that they submit claims that are for reimbursable activities and that are supported properly. Additionally, they should refile claims when appropriate. Further, if local entities identify activities they believe are reimbursable but are not in the parameters and guidelines, they should request that the Commission consider amending the parameters and guidelines to include them.

To project more accurate statewide cost estimates, Commission staff should analyze more carefully the completeness of the initial claims data used to develop the estimates and adjust the estimates accordingly. Additionally, the Commission should disclose the incomplete nature of the initial claims data when reporting to the Legislature.

Finally, to ensure that it is able to meet its statutory deadlines in the future, the Commission should continue to assess its caseload and work with the Department of Finance and the Legislature to obtain sufficient staffing.

### **AGENCY COMMENTS**

The Commission and Controller indicate they agree with our findings and recommendations. The local entities whose animal adoption claims we reviewed generally agree with our findings and recommendations. However, three of the four local entities whose peace officer rights claims we reviewed continue to disagree with our findings. Our comments on the concerns they raise follow their responses. ■



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# INTRODUCTION

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## BACKGROUND

The Commission on State Mandates (Commission) is a seven-member group consisting of the state controller, the state treasurer, the director of finance, the director of the Office of Planning and Research, as well as one public member and two local government or school district members appointed by the governor. It is a quasi-judicial body whose primary responsibility is to hear and decide if test claims filed by local entities identify mandates for which the State is required to reimburse implementation costs. A test claim is the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the State.

Section 6 of Article XIII B of the California Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service for a local entity, the State must provide funding to reimburse the associated costs, with certain exceptions. The California Supreme Court defined a new program or higher level of service as a program that carries out the governmental function of providing a service to the public, or laws that, to implement a state policy, impose unique requirements on local agencies and do not apply generally to all residents and entities in the State.

As a quasi-judicial body, the Commission's role is similar to a court's in that it deliberates in a formal manner by considering evidence and hearing testimony from state agencies and interested parties. The courts have found that, in establishing the Commission, the Legislature intended to create an administrative forum for resolution of assertions of state mandates with procedures designed to avoid multiple proceedings, whether judicial or administrative, addressing the same alleged mandate. Like a court, the Commission does not initiate claims or actions but rules only on issues brought before it. For example, when the State enacts laws, the Commission does not evaluate the law to determine if a state-mandated local program exists until a local entity files a test claim asserting that a certain statute, executive order, or agency directive imposes a mandate. Outside of actual deliberations on the specific claim or

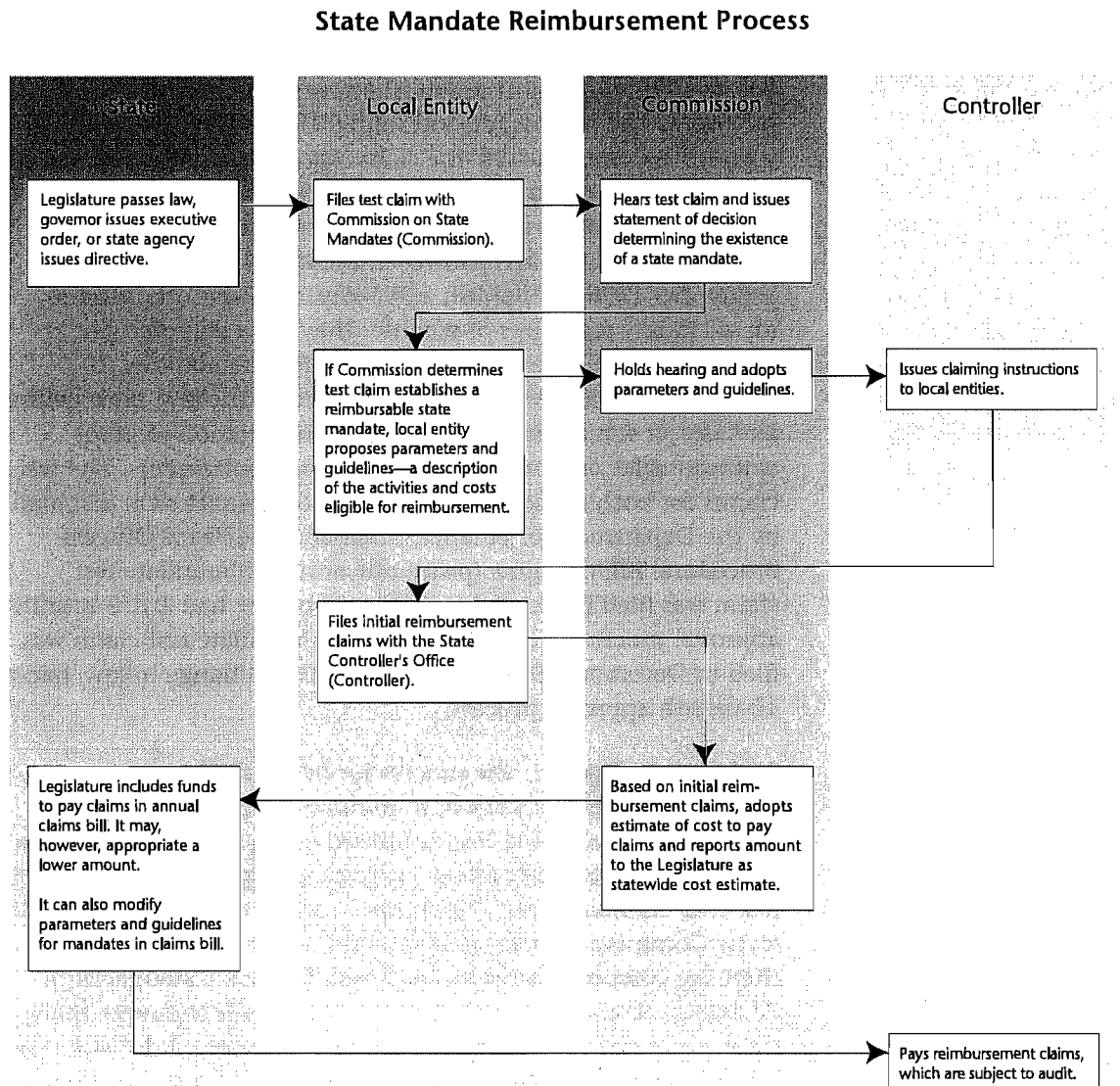
claims before it, the Commission, like a court, will not comment on the merits of a case that is pending or likely to come before it. It also will not give advisory opinions about potential issues.

Before 1999, regulations established two test claim approval processes. The process for undisputed claims was 180 days, or six months, from the day the claim was submitted to the day the Commission adopted a statewide cost estimate. The process for claims that were disputed by affected state agencies was 540 days, or 18 months. However, the law was amended in September 1998 to establish a 365-day, or 12-month, process for all claims regardless of whether they were disputed. In September 1999, the Commission adopted regulations to comply with the law for a 365-day process. The law, both before and after it was amended, allows the Commission to grant extensions for comments and hearing postponements. The test claims for both mandates discussed in this report were disputed by the Department of Finance (Finance). The Peace Officers Procedural Bill of Rights (peace officer rights) mandate test claim was filed in December 1995 and by law had an 18-month approval process. The animal adoption mandate test claim was filed in December 1998 and, because of the change in law, had a 12-month approval process.

As shown in Figure 1, the process for determining whether a state mandate that is subject to reimbursement exists begins after a requirement has been imposed and a claimant submits a test claim alleging that a new program or higher level of service has been mandated and that it has incurred new costs as a result. If the Commission determines the test claim establishes that there are costs mandated by the State, it issues a statement of decision, which is legally binding and formally indicates that a state mandate exists. After it issues its statement of decision, the Commission must adopt parameters and guidelines for claiming reimbursement of such costs. The parameters and guidelines must describe the activities and costs related to a mandate that are eligible for reimbursement and, if necessary, provide directions on how to calculate certain costs.

Although the Commission is required to adopt parameters and guidelines, the test claimant (the local entity filing the test claim) is designated by statute to submit the proposed content of those guidelines. Most important, the parameters and guidelines must comply with the Commission's statement of decision. The Commission's regulations also require that they include a summary of the new program or higher level of service required by the State. The parameters and guidelines are

FIGURE 1



also to include a description of the most reasonable methods of complying with the mandate. The administrative records for the animal adoption and peace officer rights mandates show that state and local entity representatives participated extensively in the process. For example, Finance and the State Controller's Office (Controller) provided comments on the test claims and the parameters and guidelines for both mandates. In addition, representatives of the local entities we reviewed and their consultants were included on mailing lists to receive comments and analyses related to key documents, such as the statement of decision and the parameters and guidelines.

State law requires that, once the Commission adopts parameters and guidelines, it must send them to the Controller. Within 60 days, the Controller must issue claiming instructions to claimants based on the reimbursable activities described within the Commission's guidelines. Local entities have 120 days from the issuance of the claiming instructions to file reimbursement claims with the Controller. They often employ consultants to assist them in preparing their claims. Claims filed before September 30, 2002, are subject to audit by the Controller for up to two years after the end of the calendar year in which they are filed or amended, unless the Legislature makes no appropriation for them. If this occurs, the two-year period starts once an appropriation and initial payment is made.<sup>1</sup> Through fiscal year 2001-02, local entities have submitted \$223.5 million in peace officer rights mandate claims and \$60.8 million in animal adoption mandate claims. The State paid \$50 million of the initial peace officer rights mandate claims in 2001, the year those claims were filed, so the Controller must initiate an audit of the initial claims by December 2003. The Controller is not facing a deadline for auditing the animal adoption mandate because none of those claims has yet been paid. As of September 2003, the Controller had not audited any claims under either mandate.

State law also requires the Commission to adopt a statewide cost estimate and report it to the Legislature. The statewide cost estimate can cover several years and generally encompasses the initial claims submitted to date as well as projected costs based on these claims. The Commission submits the statewide cost estimate to the Legislature as part of its semiannual report. This report also includes data from the Controller regarding the funding status of all mandates for which the Legislature previously has appropriated funds. Upon receipt of the semiannual report, the Legislature is required to introduce a local government claims bill (claims bill). A claims bill, at the time of its introduction, is to provide an appropriation sufficient to pay the estimated costs of the new mandates reported to the Legislature in the Commission's semiannual report. The Legislature has the authority to amend, modify, or supplement the Commission's parameters and guidelines for mandates contained in the claims bill. Although the statutory scheme

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<sup>1</sup> Effective September 30, 2002, claims filed for reimbursement are subject to the initiation of an audit by the Controller no later than three years after the date the actual claim is filed or last amended, whichever is later, unless no funds are appropriated or no payment is made to a claimant. If this occurs, the three-year period begins on the day the initial payment is made.

contemplates that the Legislature will appropriate funds to reimburse the cost of a state-mandated local program, it can delete funding from the claims bill that funds the mandate. If the Legislature does so, claimants may seek relief in court to declare the mandate unenforceable.

## **BACKLOG OF UNFUNDED MANDATES**

Traditionally, the Legislature has funded ongoing mandates in the annual Budget Act and has funded new mandates, or those recently identified by the Commission, in the claims bill. Funding in the Budget Act seldom has been sufficient to pay all ongoing local mandate claims, so the Legislature usually appropriates funding for this deficiency in the annual claims bill. However, according to the Controller, as of November 2002, the State had not paid more than \$1.2 billion of the nearly \$2.7 billion of costs claimed between fiscal years 1993–94 and 2001–02.

According to the Legislative Analyst's Office, in fiscal year 2002–03, due to its fiscal difficulties, the State did not fund noneducation mandates in the budget or claims bill but deferred mandate reimbursements to an unspecified date. The State did not repeal or suspend their legal obligations, however, so local entities must carry out these mandated tasks despite the delay in reimbursement. Nevertheless, the State ultimately will have to pay for these costs if the implementation of the mandate has not been suspended, including interest that amounted to \$56 million as of May 2002. As part of the State's 2003–04 Budget Act, the Legislature in many instances deferred state funding to reimburse local entities or suspended local entities' requirement to implement the mandates, including the animal adoption mandate.

## **PEACE OFFICER RIGHTS MANDATE**

In 1976, seeking to ensure stable employer-employee relations and effective law enforcement services, the Legislature established California Government Code, sections 3300 through 3310. Subsequently, the Legislature amended the code sections through various statutes. We refer to these code sections, as amended, as the peace officer rights law. This law provides a series of rights and procedural safeguards to all peace officers that are subject to investigation or discipline, including those employed by local entities.

On December 21, 1995, the city of Sacramento filed a test claim with the Commission asserting that the peace officer rights law imposed a state-mandated local program that was subject to reimbursement by mandating uniform statewide procedures governing disciplinary procedures for local peace officers. The test claim also asserted that the requirements imposed by the peace officer rights law were broader than those imposed by the constitutional due-process clauses.

On November 30, 1999, the Commission adopted its statement of decision that the peace officer rights law constitutes a *partially* reimbursable state-mandated program—meaning only certain aspects of the new law imposed a state-mandated local program that is subject to reimbursement. By statute, the Commission is prohibited from finding that costs are mandated by the State if it finds that the statute is declaratory of existing law, based on judicial action. In the case of the peace officer rights mandate, the courts already had interpreted the requirements imposed on local entities by the constitutional due-process clauses as imposing some of the same obligations contained in the peace officer rights law, so the Commission was prohibited from finding that those activities were a reimbursable state mandate. Accordingly, the Commission’s statement of decision analyzed the peace officer rights law to determine which aspects of that law already were required under constitutional provisions and, therefore, not reimbursable, and which requirements imposed a higher level of service than required by constitutional provisions and are reimbursable.

The Commission made several substantive and technical modifications to the peace officer rights test claimant’s proposed parameters and guidelines to conform to its statement of decision before adopting them on July 27, 2000. On March 29, 2001, based on initial claims filed with the Controller at that time, the Commission adopted a statewide cost estimate of \$152.5 million for the peace officer rights mandate for fiscal years 1994–95 through 2001–02.

## **ANIMAL ADOPTION MANDATE**

Animal control agencies within local governments care for stray and surrendered animals in California communities. This includes housing, veterinary care, and vaccinations. These agencies also pursue adoption or owner redemptions of those animals. Animals not successfully redeemed or adopted

usually are euthanized. Seeking to prevent the euthanization of adoptable or redeemable animals, the Legislature enacted Chapter 752, Statutes of 1998, which we refer to as the animal adoption law. This law requires an increase in the holding period from three days to four to six business days, as specified, for stray dogs and cats. It also requires a holding period of four to six business days for other specified animals, the verification of the temperament of feral (wild) cats, the posting of lost and found lists, the maintenance of impound records, and "necessary and prompt veterinary care" for impounded animals.

On December 22, 1998, Los Angeles County filed a test claim with the Commission to establish an animal adoption mandate so it could receive reimbursement from the State for the costs to implement the animal adoption law. According to the test claim, prior law provided that no dog or cat impounded by a public pound or specified shelter could be euthanized before three days after the time of impounding.

In 2001, responding to the test claim, the Commission issued a statement of decision that the animal adoption law imposed a partially reimbursable state-mandated program. In part, the Commission found that this law increased costs by requiring shelters to hold dogs and cats for longer than the three days previously required by law and by requiring shelters to perform the other specified activities listed earlier. On February 28, 2002, the Commission adopted parameters and guidelines that allow reimbursement for the care of only those animals eventually euthanized or that die during the increased holding period. Some costs related to animals adopted or redeemed, such as care, maintenance, and treatment, are excluded from reimbursement because the Commission ruled that shelters have sufficient fee authority to recover these costs. Finally, based on initial claims filed at the time, the Commission adopted a statewide cost estimate of \$79.2 million for the animal adoption mandate for fiscal years 1998–99 through 2003–04. In July 2003, Finance petitioned the Superior Court of California in Sacramento County asking it to direct the Commission to set aside its original decision. The petition is pending. However, as mentioned earlier, the animal adoption mandate has been suspended for fiscal year 2003–04.



## PREVIOUS AUDIT OF ANOTHER STATE MANDATE

During a prior audit on a state mandate, *School Bus Safety II: State Law Intended to Make School Bus Transportation Safer Is Costing More Than Expected*, issued March 2002, we found that the School Bus Safety II mandate cost substantially more than the \$1 million annual cost anticipated when the Legislature passed the law that led to the mandate. The Commission reported in January 2001 that the mandate had an estimated annual cost of \$67 million for fiscal year 2001–02. The costs claimed varied significantly depending upon the approach taken by the consultants who assisted school districts in claiming reimbursement. We determined that the different approaches appeared to be the result of a lack of clarity in guidance adopted by the Commission. We also reported that the Commission could have avoided delays totaling more than 14 months in making its determination that a state mandate existed. Of the \$2.3 million in direct costs claimed by the seven school districts for fiscal year 1999–2000, we could trace only about \$606,000 to documents that sufficiently quantified the costs.

## SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee asked the Bureau of State Audits to examine the Commission's process for developing statewide cost estimates and establishing parameters and guidelines for claims reimbursement related to selected state mandates, including the peace officer rights mandate. We also were asked to review the Controller's process for providing claiming instructions and for processing and monitoring claims. Finally, we were asked to determine whether a sample of submitted mandate claims, including those for the peace officer rights mandate, was consistent with the Commission's parameters and guidelines.

We selected another mandate to examine as well—the animal adoption mandate—because of its possible significant fiscal impact. For fiscal years through 2001–02, local entities claimed reimbursement for more than \$284 million for the peace officer rights and animal adoption mandates combined, with a possible ongoing cost of more than \$57 million per year based on the most recent actual claims.

We interviewed Commission staff and evaluated their methodology in developing the statewide cost estimate for the two mandates. To gain an understanding of the process used

to estimate the costs associated with the laws leading to the mandates, we interviewed Finance staff and reviewed fiscal analyses of each mandate.

To understand the Commission's responsibilities in developing parameters and guidelines, we interviewed Commission staff and reviewed applicable laws, regulations, and procedures. To determine whether the parameters and guidelines provided clear and sufficient guidance for claiming reimbursable costs, we reviewed the language and interviewed Commission staff, local entities, and relevant consultants. We also determined whether the parameters and guidelines reflect each mandate's statement of decision.

Because the Legislative Analyst's Office pointed out specific areas of concern for both mandates in its analyses of the fiscal year 2002–03 and 2003–04 budget bills, we met with staff to understand their observations.

To determine whether expenditures and activities claimed by local entities were consistent with the mandates' parameters and guidelines, we examined a sample of four claims for each mandate for the most recent fiscal year for which claims data was available—fiscal year 2001–02. In assessing what costs we deemed to be reimbursable, we relied primarily on the plain language in the statement of decision and the parameters and guidelines. Overall, we reviewed eight claims from six different local entities. Specifically, we reviewed the fiscal year 2001–02 peace officer rights claims filed by the city of Los Angeles, Stockton, San Francisco, and Los Angeles County. We also reviewed the fiscal year 2001–02 animal adoption claims filed by the cities of Los Angeles and Stockton, as well as San Jose and San Diego County. When selecting the sample of claims for each mandate, we considered the dollar amount, the geographic area (urban, suburban, and rural), and the structure (city or county) of the local entities filing claims. For each mandate, our sample also included the two consultants who helped prepare claims amounting to more than 70 percent of the total dollars claimed and included one claim completed by a local entity not assisted by a consultant. Additionally, based on a summary of all claims submitted for fiscal year 2001–02 for both mandates, we identified the mandate requirements that pose the greatest state-reimbursable costs.

We interviewed the consultants and personnel at the local entities we selected to determine how reimbursable costs were being identified and examined the claims to assess whether the types of activities local entities claimed were allowable. To determine whether sufficient supporting documentation existed for the claims, we examined the Controller's and local entities' claims files.

Finally, to understand the Controller's responsibilities and authority for preparing mandate claiming instructions and for processing and monitoring mandate claims, we reviewed the applicable laws, regulations, and procedures and interviewed Controller staff. ■

# CHAPTER 1

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## ***Claimed Costs for the Peace Officer Rights and Animal Adoption Mandates Are Higher Than Expected and Frequently Questionable***

### CHAPTER SUMMARY

The Legislature did not anticipate significant costs associated with the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates when enacting the laws leading to these mandates. However, local entities have submitted, for fiscal years through 2001–02, \$223.5 million in peace officer rights claims, of which the State paid \$50 million, and \$60.8 million in animal adoption claims, none of which the State has paid. We question a significant amount of costs the local entities we reviewed claimed for peace officer rights activities because they are not in accordance with the guidance of the Commission on State Mandates (Commission). In addition, they could not support claimed costs adequately and made errors on their claims. To a lesser degree, local entities claiming costs under the animal adoption mandate could not support costs adequately. Additionally, they made calculation errors resulting in a net overstatement of claimed costs.

The high level of questionable costs related to the peace officer rights mandate is due primarily to claimants broadly interpreting the Commission's guidance, which is incorporated into each mandate's claiming instructions. Although we noted minor concerns, overall the Commission's guidance and the claiming instructions issued by the State Controller's Office (Controller) appear adequate. We question \$16.2 million of the total \$19.1 million of direct costs claimed by the four entities we reviewed because the activities related to these costs do not correspond with the reimbursable activities outlined in the Commission's statement of decision and its parameters and guidelines.

In varying degrees, claimants under the peace officer rights and animal adoption mandates lacked adequate support for their claimed costs and made errors in their claim calculations. In particular, none of the local entities whose peace officer rights

claims we reviewed had adequate support for the amount of time spent on activities claimed, leading us to question \$18.5 million of the \$19.1 million in direct costs they claimed. Additionally, we noted calculation errors in these claims that resulted in overstatements of \$3.7 million for one fiscal year 2000–01 claim and a total of \$377,000 for fiscal year 2001–02 claims. Because we evaluated entities' claims against several criteria—nature of activity, sufficiency of support, and accuracy of calculations—the costs we question cannot be combined with each other to determine an overall effect.

To a lesser extent, we also found unsupported costs in animal adoption claims. We question \$979,000 of the \$5.4 million total costs claimed primarily because claimants could not adequately support the amount of time spent on reimbursable activities and a net total of \$675,000 because of claimant errors in calculations. In addition, although the Commission's animal adoption guidance is generally clear, it could have devised a better formula for determining the reimbursable amount of the costs of new facilities. The current formula lacks a key factor needed to isolate the costs associated with building a facility large enough to address the increased need for space caused by the mandate, as opposed to other factors, such as preexisting shelter overcrowding or predicted animal population growth.

### **LOCAL ENTITIES FILED HIGHER THAN EXPECTED CLAIMS UNDER BOTH MANDATES**

***As of April 2003, local entities have submitted claims for activities through fiscal year 2001–02 totaling \$223.5 million and \$60.8 million for the peace officer rights and animal adoption mandates, respectively.***

The Legislature did not anticipate significant state-reimbursable costs when it considered the peace officer rights and animal adoption legislation. Even though the original legislation related to the peace officer rights mandate was considered a state-mandated local program when it was enacted in 1976, fiscal analyses at that time and for amendments thereafter anticipated that the State would incur little or no costs for various reasons. The Legislature also believed the animal adoption legislation imposed a state-mandated local program but did not expect significant state-reimbursable costs because it believed local entities would generate sufficient revenue to offset any increased costs caused by the mandate. However, as of April 2003, local entities have submitted claims for the peace officer rights mandate totaling \$223.5 million for fiscal years 1994–95 through 2001–02 and \$60.8 million for the animal adoption mandate for fiscal years 1998–99 through 2001–02. Although

no payments have been made on any of the animal adoption claims, the State has paid \$50 million to local entities for peace officer rights claims.

### **The Legislature Did Not Anticipate High Costs for Either Mandate**

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*Throughout the legislative history surrounding peace officer rights, the Legislature expected the State to incur no significant costs.*

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At the time it was considering passage of the laws that the Commission later determined imposed state mandates for the peace officer rights and animal adoption mandates, the Legislature did not expect that passage of the laws would have a significant financial impact on the State. Although the final authority for determining whether a law imposes a mandate rests with the Commission, the legislative counsel is required to inform the Legislature if it believes a proposed law would create a mandate. The legislative counsel found that only four of the 11 bills on which the peace officer rights mandate is based would impose a state-mandated local program. The Assembly Revenue and Taxation Committee analysis for the final version of the original 1976 legislation, the only bill for which state costs were anticipated, indicates that anticipated costs were minor. For the other three bills, the legislative counsel believed the State would not be required to reimburse any resulting mandated costs. For two of the bills, the legislative counsel found that local entities could pursue other ways of obtaining reimbursement, such as levying service charges, fees, or assessments, that would be sufficient to pay for the mandated program or increased level of service. As for the fourth bill, the legislative counsel determined that it changed the definition of what constitutes a crime, which specifically negates any obligation of state reimbursement according to Article XIII B, Section 6, of the California Constitution. In short, throughout the legislative history surrounding peace officer rights, the Legislature expected the State to incur no significant costs.

When the Legislature was considering the animal adoption legislation, subsequently enacted as Chapter 752, Statutes of 1998, legislative committee staff that prepared the fiscal analysis did not predict significant state-reimbursable costs because, at least in the fiscal analysis prepared for the Assembly Committee on Appropriations, they believed that holding animals for longer periods before resorting to euthanization would generate revenue from increased adoption and owner redemption of

animals. The committee believed that the fees associated with these activities could be used to offset any increased costs and could also reduce costs associated with euthanization.

Further, the Department of Finance (Finance) argued that the legislation would not impose a state mandate. Finance cited *County of Los Angeles v. State of California*, in which the California Supreme Court stated that a state-imposed law is reimbursable only if it applies uniquely to local entities and not generally to all residents and entities in the State. Later, when the Commission was considering whether the enacted law constituted a reimbursable mandate, Finance again contended that the costs were not reimbursable because they were not unique to local government and commented that the law imposed animal control activities on both public- and private-sector entities. In addition, Finance argued that local entities had sufficient fee authority to recover the costs associated with all animals held in their shelters, so these costs should not be deemed a state mandate.

The Commission's February 2001 statement of decision differed from Finance's argument. The Commission found that local entities have sufficient fee authority to recover the costs associated only with adopted or redeemed animals. Thus, it determined these costs are not reimbursable. However, it found that local entities do not have sufficient fee authority in certain circumstances. In particular, the Commission's guidance allows reimbursement for cost of care associated only with those animals that die or ultimately are euthanized. It does not direct local entities to reduce their claimed costs by the amount of adoption or redemption revenue they generate or any savings that might result from decreased euthanizations. The Commission's guidance does indicate that dog license fees could offset claimed costs. However, under existing law, claimants can first apply revenues from dog license fees to the costs associated with administering the dog licensing program and then to other costs such as animal control field operations, so it is likely that claimants would apply little, if any, revenue from dog license fees to shelter costs appearing on the animal adoption claims.

Additionally, the Commission found in its statement of decision that, although the animal adoption law applies to public and private shelters, current law does not *require* private shelters to accept stray animals. Private shelters have the discretion not to accept or care for stray animals in the first place, so the Commission found that the animal adoption law did not

impose any new mandatory obligations on them. In spite of the Commission's decision, Finance continues to maintain that the State should not be required to reimburse local entities for their compliance with the animal adoption mandate. In July 2003, it petitioned the Superior Court of California in Sacramento County asking the court to direct the Commission to set aside its original decision. That petition is pending.

#### Local Entities Filed Significant Claims Under Both Mandates

As shown in Table 1, as of April 2003 claimants have submitted \$223.5 million in peace officer rights claims for fiscal years 1994-95 through 2001-02 and \$60.8 million in animal adoption claims for fiscal years 1998-99 through 2001-02.

**TABLE 1**

**Claims Filed for Fiscal Years 1994-95 Through 2001-02 for the Peace Officer Rights and Animal Adoption Mandates (In Millions)**

Fiscal Year	Costs Claimed	
	Peace Officer Rights Mandate	Animal Adoption Mandate
1994-95	\$ 18.4	NA
1995-96	21.1	NA
1996-97	21.6	NA
1997-98	22.9	NA
1998-99	28.7	\$ 3.9
1999-2000	34.3	17.8
2000-01	40.1	18.1
2001-02*	36.4	21.0
<b>Totals</b>	<b>\$223.5</b>	<b>\$60.8</b>

Source: Claims on file with the State Controller's Office as of April 2003.

NA = Not applicable. Eligibility for reimbursement did not occur for the animal adoption mandate until January 1999.

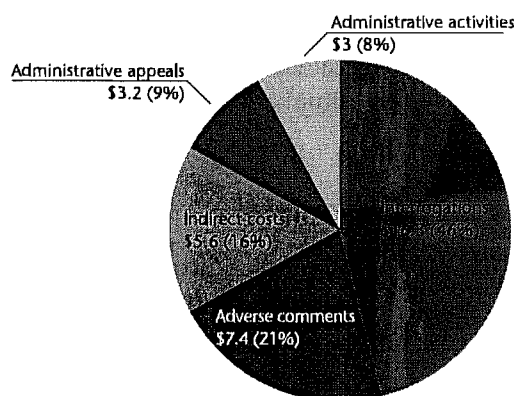
\* The amounts shown for fiscal year 2001-02 include \$900,000 in estimated claims for the peace officer rights mandate and \$900,000 in estimated claims for the animal adoption mandate. Figures 2 and 3 on the following pages include amounts for actual claims only.



Claims under both mandates generally increased each year until fiscal year 2001–02, when the level of peace officer rights claims declined. However, these figures likely will increase because claimants can submit late or amended claims for that year until January 2004. In Figures 2 and 3, we provide a breakdown of the costs claimed under each category of reimbursable costs for each mandate for fiscal year 2001–02.

**FIGURE 2**

**Categories of Costs Claimed Under the  
Peace Officer Rights Mandate for Fiscal Year 2001–02\*  
(Dollars in Millions)**



Source: Claims on file with the State Controller's Office as of April 2003.

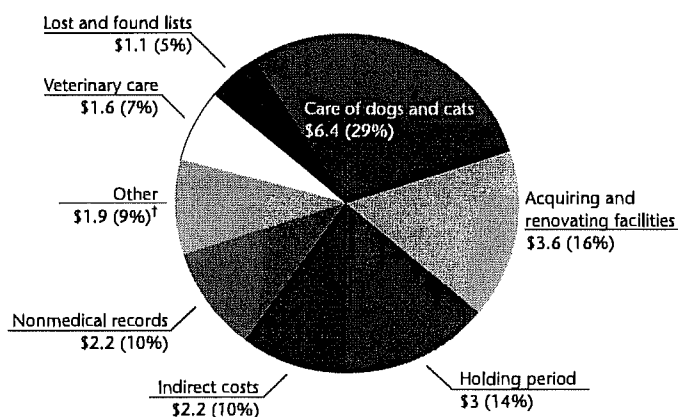
\* The total of this figure is \$35.5 million, which is \$900,000 less than the amount shown on Table 1 for fiscal year 2001–02. This figure does not include estimated claims because they do not provide a breakdown of costs by category.

As Figure 2 shows, the largest category of costs claimed for fiscal year 2001–02 under peace officer rights was interrogations, which accounted for 46 percent of the total costs claimed. However, Figure 2 must be used with caution because it represents a breakdown of the costs as claimed and may not be representative of the actual reimbursable costs incurred by local entities under the peace officer rights mandate. We audited four claims, which accounted for more than 60 percent of the \$36.4 million claimed under peace officer rights in fiscal year 2001–02. As described in the following sections of this report, we found that the four local entities we reviewed claimed reimbursement for activities that are not in accordance with the Commission's guidance. They also did not have adequate support for the amounts they claimed.

As shown in Figure 3, the largest category of expense claimed under the animal adoption mandate for fiscal year 2001–02 was for the care of dogs and cats, which accounted for 29 percent of total costs claimed. We reviewed four claims, which in total represented 26 percent of the \$21 million claimed. The animal adoption parameters and guidelines allow some discretion in terms of the particular categories under which certain costs can be claimed. For instance, computer software costs, which are allowable because the software is used to maintain records on impounded animals as specified by the mandate, can be claimed under the one-time cost category, “Computer Software,” but the same costs could be claimed alternatively under the “Procuring Equipment” component or be included as part of indirect costs. Therefore, the computer software cost component by itself does not necessarily provide a clear indication of the total amount local entities spent on computer software to comply with the animal adoption mandate.

**FIGURE 3**

**Categories of Costs Claimed Under the  
Animal Adoption Mandate for Fiscal Year 2001–02\***  
(Dollars in Millions)



Source: Claims on file with the State Controller's Office as of April 2003.

\* The sum of the individual wedges, which is \$22 million, is larger than the \$20.1 million claimed by \$1.9 million. The difference represents revenues or reimbursements that are required to be offset against costs incurred. The \$20.1 million claim total is \$900,000 less than the amount shown in Table 1 because Figure 3 does not include estimated claims, which do not provide a breakdown by category.

† "Other" includes the costs of care of other animals, testing of feral cats, procuring equipment and computer software, developing policies and procedures, and training, each of which represents 3 percent or less of the total amount claimed.

As of the date of this report, the State has paid none of the animal adoption claims submitted by local entities. However, the Controller has paid \$50 million of the \$223.5 million in total claims submitted for the peace officer rights mandate for fiscal years through 2001–02. The four local entities we reviewed received \$31 million, or 62 percent, of that \$50 million. As described in the next sections, we question a significant portion of the costs these four entities claimed for fiscal year 2001–02.

### **LOCAL ENTITIES CLAIMED REIMBURSEMENT FOR QUESTIONABLE ACTIVITIES UNDER THE PEACE OFFICER RIGHTS MANDATE**

Concluding that the peace officer rights law primarily implements rights already granted under the U.S. and California constitutions, the Commission considered many activities included in the law nonreimbursable. However, through a broad interpretation of the Commission’s parameters and guidelines, the four local entities we reviewed claimed \$16.2 million in questionable direct costs, representing 85 percent of the total direct costs they claimed. The entities used different methods to determine the amounts they claimed. Some entities included detailed lists of specific activities with estimates of time spent on each activity, while others claimed time in broad categories for entire groups of employees. Even though they used different methods, all four claimed reimbursement for questionable activities. Because we question such a large portion of their claimed costs, we are concerned that the State already may have paid them more than they are entitled to receive.

#### **Many Activities Included in the Peace Officer Rights Law Are Not Reimbursable**

The Commission found that many activities included in the peace officer rights law are not reimbursable because they already were required under constitutional provisions. In fact, when Commission staff initially reviewed the test claim filed by the city of Sacramento, they asked for additional information from the city because their initial research indicated that the activities required under the law merely implemented the existing procedural requirements of the due-process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution. In its later statement of decision, the Commission noted that the due-process clauses in the U.S. and California constitutions provide that the State shall not deprive any person of life, liberty, or property without

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*The Commission found that many of the activities included in the peace officer rights law were already required under the due-process clauses of the U.S. and California constitutions.*

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due process of law. Further, the Commission found that, before enactment of the peace officer rights law, the court had interpreted the due-process clause as a guarantee of procedural protection for various employees, including peace officers. After eliciting additional information from the city of Sacramento, the Commission determined that the requirements in the peace officer rights law exceeded the rights afforded under the U.S. and California constitutions.

However, in its statement of decision, the Commission determined that only those duties that exceeded the preexisting constitutional requirements impose a state mandate. For example, as described in the Appendix, the Commission clarified that the peace officer rights law requires local entities to afford peace officers the right to administrative appeals in more circumstances than previously required by the constitutional provisions. Accordingly, it allowed for reimbursement of the costs of conducting an administrative appeal only when the limited circumstances apply. The parameters and guidelines ultimately adopted by the Commission allow reimbursement for only selected steps in the disciplinary process outlined in the peace officer rights law. The Commission grouped these activities under four broad categories, which we discuss more fully in the following sections.

Three of the four entities we reviewed claimed virtually all the time their staff spent on the investigation of complaints or on the entire disciplinary process for peace officers. In explaining their position, representatives from the city and county of San Francisco (San Francisco) and Los Angeles County indicated that the peace officer rights law imposes requirements on local entities that take up a substantial portion of staff time. In contrast to these two claimants, Stockton acknowledged that it claimed a larger scope of activities than it should have once we pointed out our concerns. Moreover, although the city of Los Angeles claimed reimbursement for a lesser proportion of staff time compared with the other three claimants, it still claimed for a broader scope of activities than the parameters and guidelines allow. In short, the entities seemed to focus on the four broad categories of expense in the parameters and guidelines and not on the specific activities outlined within the categories.

**Categories of Reimbursable  
Activities Under the Peace  
Officer Rights Mandate**

- Interrogations
- Adverse comments
- Administrative activities
- Administrative appeals

In fact, in justifying a broad interpretation of the parameters and guidelines, the consultant who assisted one local entity explained that the entity's methods for complying with the mandate may be very different from the methods used by the test claimant that proposed the parameters and guidelines. Accordingly, the consultant asserted that it was appropriate for the local entity to identify and claim reimbursement for all activities it believed it carried out to comply with the mandate, even if they were not identified specifically in the parameters and guidelines. Although we acknowledge that local entities may have different activities related to the disciplinary process, they should claim reimbursement only for activities the Commission found to be reimbursable. If a local entity believes the Commission should have identified more reimbursable activities, that entity could have brought these issues to the Commission's attention when it considered the proposed parameters and guidelines. Alternatively, the entity could have submitted a subsequent request to amend the parameters and guidelines to include additional activities.

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***Commission staff and our legal counsel have advised us that the statement of decision is legally binding on the claimants and that claimants should be familiar with the analysis and conclusion it contains when submitting their claims.***

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In addition, although three of the four claimants specifically referenced language in the Commission's statement of decision when responding to our concerns, they did not appear to look at the statement of decision or the formal administrative record surrounding the adoption of the statement of decision for guidance when they developed their claims. Although the parameters and guidelines are designed to give claimants guidance on activities and costs that may be claimed for reimbursement, they are based on the statement of decision, which presents the Commission's legal decision as to whether a state mandate exists and the legal analysis that supports that decision. Commission staff and our legal counsel have advised us that the statement of decision is legally binding on the claimants and that claimants should be familiar with the analysis and conclusion it contains when submitting their claims. In addition, claimants should turn to the formal administrative record as an interpretive aid if they do not find sufficient guidance in the plain meaning of the parameters and guidelines or the statement of decision. The administrative record contains a variety of information in addition to the parameters and guidelines and statement of decision, including comments from interested parties, Commission staff analyses, and minutes from Commission hearings.

Admittedly, this process may require claimants to review various materials, including the legal analysis contained in the Commission's statement of decision, when submitting claims. However, we were surprised that claimants and their consulting firms (consultants) were not more knowledgeable of the guidance included in the administrative record. Representatives of the consultants who assisted three of the four claimants were included on various Commission mailing lists for comments and analyses related to key documents, such as the test claim, the Commission's statement of decision, and the parameters and guidelines. In addition, representatives of the consultant who assisted two of the four claimants and a representative from Los Angeles County, which prepared its own claim, participated in a hearing before the Commission to discuss the test claim. Nevertheless, the local entities we reviewed claimed costs for nonreimbursable activities based on their broad interpretations of the Commission's statement of decision and parameters and guidelines. As shown in Table 2, we question \$16.2 million of the \$19.1 million they claimed in direct costs for fiscal year 2001–02.

**TABLE 2**

**Questioned Costs Resulting From Broad Interpretations in Fiscal Year 2001–02  
Peace Officer Rights Mandate Claims**

Cost Category	Local Entities				Totals
	Los Angeles County	City of Los Angeles	City and County of San Francisco	City of Stockton	
Direct costs claimed	\$3,920,000	\$8,977,000	\$5,799,000	\$388,000	\$19,084,000
Questioned costs by category:*					
Interrogations	2,561,000	3,357,000	3,379,000	124,000	9,421,000
Adverse comments	NA	1,860,000	1,712,000	NA	3,572,000
Administrative activities	NA	1,390,000	224,000	0	1,614,000
Administrative appeals	1,269,000	NA	104,000	235,000	1,608,000
<b>Total questioned costs</b>	<b>\$3,830,000</b>	<b>\$6,607,000</b>	<b>\$5,419,000</b>	<b>\$359,000</b>	<b>\$16,215,000</b>
Percent questioned	97.7%	73.6%	93.4%	92.5%	85.0%

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

\* Since we evaluated the local entities' direct cost claims against two separate criteria—support and eligibility—the costs we question in this table cannot be added to the costs we question in Table 3 on page 42.

In assessing what costs we deemed to be questionable in the sections that follow, we relied on the plain language in the statement of decision and parameters and guidelines. In addition, we highlight certain other parts of the administrative record that served to emphasize and corroborate the plain language.

### **Broad Interpretations and Misunderstanding of the Parameters and Guidelines Led to Questionable Interrogation Costs**

Rather than focusing on only the reimbursable activities surrounding the interrogation of a peace officer in connection with an investigation, some local entities we reviewed generally

claimed reimbursement for all their activities related to the investigative process. Under the interrogations category, the parameters and guidelines list only five specific activities eligible for reimbursement and include tasks that are reasonably necessary to carry out these activities. However, as explained in the paragraphs that follow, the local entities claimed reimbursement for a greater scope of activities than what the Commission intended. As a result, we question at least \$9.4 million of the \$10.1 million they claimed under the interrogations category of expense.

#### **Reimbursable Interrogation Activities**

The activities listed below are reimbursable only when a peace officer is under investigation or becomes a witness for an investigation that could lead to certain disciplinary actions:

- Compensating the subject for interrogations occurring during off-duty time, when required by the seriousness of the investigation.
- Providing subject prior notice regarding the interrogation.
- Tape recording of the interrogation, if the subject also records it.
- Providing subject access to a tape of the interrogation prior to certain further proceedings.
- Producing transcribed copies of notes of the interrogation and copies of reports or complaints that are not confidential, when requested by the subject.

For example, we question about \$3.4 million of the \$3.5 million claimed by San Francisco. It claimed reimbursement for the entire working year of 28 staff in its police department, including 10 of the 12 staff in its management control division, which is dedicated to peace officer discipline activities. In addition, San Francisco claimed costs for 90 percent of the total annual working hours of the 30 staff in the Office of Citizen Complaints (Citizen Complaints), which is dedicated to

investigating citizen complaints against peace officers. The other 10 percent of Citizen Complaints' staff time was spent on administration or other areas not dealing at all with peace officer discipline. Representatives of the police department and Citizen Complaints defended this approach, stating that these staff are dedicated to peace officer discipline activities. In addition, the representatives stated that an activity is reimbursable unless it is excluded specifically in the parameters and guidelines. However, San Francisco's argument suggests that the Commission be expected to spell out activities that are not reimbursable. Such

***Under the interrogations category, the San Francisco police department claimed \$2.7 million for the full working year of 23 employees; however, we question the entire amount because it could not demonstrate that the time claimed was spent on reimbursable activities.***

a view appears to be at odds with the focus of the mandate process, which is to determine whether laws impose mandates and, if so, to define which activities are reimbursable.

The police department and Citizen Complaints used different approaches in determining how to allocate the total staff time spent on the disciplinary process to the various categories of expense, including interrogations. According to San Francisco's consultant, the police department believed that the staff whose time was claimed were 100 percent dedicated to activities related to peace officer rights. Therefore, based on information provided by the management control division, the consultant made judgments as to the most appropriate place to claim the full efforts of these employees. Under the interrogations category, the police department claimed \$2.7 million for the full working year of 23 employees. We question all these costs because the police department could not demonstrate that the time claimed was spent on any reimbursable activities.

To determine how to claim reimbursement for its costs, Citizen Complaints developed a list of discipline-related activities that each classification of employee generally performs. It based time estimates on common ranges of time spent on each activity and experience in training new investigators. Citizen Complaints grouped the percentages by category of expense and charged the resulting portion of annual salaries and benefits to the respective categories. However, the activities described often did not correspond with the reimbursable activities described in the parameters and guidelines. Because of this, it was difficult to quantify exactly how much of the amount claimed is reimbursable. Focusing on activities that comprised the largest costs, we determined that at least \$725,000 of the \$847,000 the office claimed under interrogations related to activities that are not reimbursable under the parameters and guidelines.

In particular, we question the \$672,000 charged for its investigators to perform such activities as establishing or verifying the identity of the involved officers, consulting with legal staff and supervisors, preparing questions for the interrogation, and preparing summary reports. We also question the \$53,000 charged for its attorneys to review sustained case reports, summary reports, and supporting evidence and analysis, and to conduct legal research. None of these activities is included in the parameters and guidelines as reimbursable activities. Citizen Complaints' staff contend that virtually all staff time is reimbursable because the activities performed serve



to establish the nature of the investigation, which is essential to the notice of interrogation provided to the officer. However, Commission staff pointed out in their analysis of the test claimant's proposed parameters and guidelines that the peace officer rights law does not require local entities to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given by the officers and witnesses.

Similar to Citizen Complaints, the city of Los Angeles developed a list of the key activities it performs in its disciplinary process. After identifying certain activities that it believed were not reimbursable, it grouped the remaining activities under the four categories of expense, including interrogations. However, the activities included under the four categories on its list did not correspond to the descriptions of reimbursable activities in the parameters and guidelines. Thus, it was difficult to assess exactly how much of the costs claimed are reimbursable. We focused on the activities that accounted for the highest costs and determined that at least \$3.4 million of the \$3.8 million the city of Los Angeles claimed related to activities that are not reimbursable.

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***We determined that at least \$3.4 million of the \$3.8 million the city of Los Angeles claimed under the interrogations category related to activities that are not reimbursable.***

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The \$3.4 million questioned was for time spent in interrogations by both interrogators and subjects. However, as described earlier, Commission staff indicated that reimbursement is not allowed for conducting interrogations. In addition, the time claimed for the subjects of interrogations was for regular hours spent in interrogations and did not include overtime, but in its discussion of compensation for interrogations in the parameters and guidelines, the Commission stated that compensating the peace officers for interrogations occurring during off-duty time was reimbursable. The city of Los Angeles states that the reimbursable activities described under the interrogations category of expense in the parameters and guidelines are intended only to clarify what specific activities are linked to the basic interrogation process; therefore, the interrogation time of witnesses or potential targets of interrogations when they are peace officers should be allowed, and the time spent by interrogating officers should be allowed. However, these activities are not allowable per the parameters and guidelines.

Los Angeles County took a very broad interpretation of the parameters and guidelines in claiming costs. We questioned \$2.6 million of the \$2.7 million it claimed under the interrogations category because these costs are for all the time its staff spent investigating complaints against peace officers.

***According to Los Angeles County, the implementation of the peace officer rights law requires substantial investigator time and such costs are reimbursable; however, Commission staff had previously pointed out that the law does not require local entities to investigate allegations.***

According to Los Angeles County, the implementation of the peace officer rights law requires substantial investigator time, and such implementation costs are reimbursable. Los Angeles County also states that the parameters and guidelines provide no express or implied limitation as to the amount of time that may be devoted to an investigation. In particular, Los Angeles County pointed to language in the introductory section of the interrogations category of expense that precedes the listing of reimbursable activities to support its claiming of substantial investigator time. However, Los Angeles County staff neglected to note that the introductory language provides reimbursement only for the specific activities detailed later within the interrogations section. Therefore, we fail to see how the introductory language supports Los Angeles County's contention.

Los Angeles County pointed to language in the body of the statement of decision that refers to "conducting the **investigation** when the peace officer is on duty." [Emphasis added.] However, the conclusion of the statement of decision refers to "conducting the **interrogation** of a peace officer while the officer is on duty." [Emphasis added.] Also, the parameters and guidelines refer to interrogations. As we already noted, the Commission determined that reimbursement would be allowed only if the interrogation occurred when the officer was off duty. Further, as described previously, Commission staff pointed out in their analysis of the test claimant's proposed parameters and guidelines that the peace officer rights law does not require local entities to investigate allegations. Therefore, even though the wording within the statement of decision appears to have a minor inconsistency, investigative time is clearly not reimbursable.

We also question \$124,000 of the more than \$152,000 Stockton claimed under the interrogations category. Stockton's consultant based its interrogation charges on all the staff time spent processing less complex cases rather than focusing on the specific reimbursable activities in the parameters and guidelines. For example, Stockton claimed reimbursement for reviewing complaint forms, interviewing complainants and all involved parties, and preparing investigative reports. Time spent on complex cases was charged to the administrative appeals category as discussed later. City officials agree that their claim was prepared incorrectly and plan to submit a revised claim.

## Although Only Two Local Entities Claimed Reimbursement, They Overstated Adverse Comment Costs

### Reimbursable Adverse Comment Activities

Depending on the circumstances surrounding an adverse comment, reimbursement is allowed for some or all of the four activities listed below:

- Providing notice of the adverse comment.
- Providing an opportunity to review and sign the adverse comment.
- Providing an opportunity to respond to the adverse comment within 30 days.
- Noting on the document the subject's refusal to sign the adverse comment and obtaining the signature or initials of the subject under such circumstances.

Applying different interpretations to the parameters and guidelines, two of the local entities we reviewed claimed adverse comment costs and two did not. Although not specifically defined in either the peace officer rights law, which was the basis for the mandate, or the parameters and guidelines, an adverse comment is generally considered to be something that is contrary or harmful to one's interests or welfare. In the context of the peace officer rights mandate, an adverse comment is in writing. At most, reimbursement is provided for four specific adverse comment activities and tasks that are necessary to carry out those activities. The two local entities that claimed costs under this category listed activities not consistent with the parameters and guidelines, so we question at least \$3.6 million of the \$4.8 million they claimed under this category of expense.

In particular, we question at least \$1.9 million of the \$3 million the city of Los Angeles claimed in its fiscal year 2001–02 claim. City officials indicated that to provide the officer with notice of an adverse comment, it must first determine whether the comment is, in fact, adverse and whether the complainant and complaint are credible. Therefore, the city of Los Angeles claimed time for activities such as interviewing the complainant, completing the complaint form, and preparing a complaint investigation report for each case. In defending its interpretation, the city referred to language that appears in the parameters and guidelines after the specific list of reimbursable activities. The language referred to by the city of Los Angeles states that “included in the foregoing” [the already specified reimbursable activities] are the following:

- Review of circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel including determination of whether the circumstances or documentation constitute an adverse comment.
- Preparation of adverse comment and review for accuracy.

- Notification and presentation of the adverse comment to the officer.
- Notification of the officer's rights regarding the adverse comment.
- Review of the response to the adverse comment.
- Attaching the response to the adverse comment and filing.

It is our understanding that these activities should apply only in the limited context of providing notice of the adverse comment to the peace officer and providing the officer an opportunity to review, sign, and respond to the adverse comment. In responding to our point of view, Commission staff stated that activities such as interviewing the complainant, preparing the complaint investigation report, and other investigative activities are not reimbursable. Further, Commission staff emphasized that the peace officer rights law provides procedural protections for peace officers but does not require local entities to investigate allegations against peace officers.

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***Commission staff emphasized that the peace officer rights law provides procedural protections for peace officers but stated that activities such as interviewing complainants and preparing investigation reports are not reimbursable.***

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We also question \$1.7 million of the \$1.8 million in adverse comment costs San Francisco claimed for fiscal year 2001–02. As mentioned previously, San Francisco claimed costs related to its Office of Citizen Complaints and its police department. Similar to the city of Los Angeles, these two organizations claimed reimbursement for activities such as investigators conducting examinations to verify complaints and scheduling, preparing for, and conducting interviews. In clarifying its rationale, Citizen Complaints stated that all activities and involvement of its staff “from receipt of a complaint through the completion of the intake serve to establish the nature of the investigation, which is essential to the notice to the officer.” However, it appears that Citizen Complaints claimed all time spent on activities related to peace officer rights rather than the time spent on the reimbursable portion. Based on the foregoing discussion, it is clear that the Commission did not intend to allow reimbursement for such a broad scope of activities. Moreover, \$602,000 of the \$1.7 million San Francisco claimed related to the full-time efforts of five sergeants whose time also was included as part of the 23 positions claimed under the interrogations category.

In response to our concern about its claiming reimbursement for the time to schedule and prepare for interviews under the adverse comment category, San Francisco argued that

if an activity is not specifically excluded in the parameters and guidelines, then “it should be open to discussion as the department’s appropriate response” to the peace officer rights law. Although we agree that local entities have some discretion in determining how they will carry out mandated activities, the activities for which they claim reimbursement still must be consistent with the Commission’s intent. When we requested input on this issue from Commission staff, they stated that for an activity to be reimbursable, it must be required by the statute that led to the mandate, as determined in the Commission’s statement of decision, or must be a reasonable method of complying with the statute, as determined in the Commission’s parameters and guidelines. The Commission, when adopting parameters and guidelines, has the discretion to determine the most reasonable method of complying with the mandate. However, in laying out what is reimbursable under the adverse comment category, neither the statute nor the parameters and guidelines include the type of activities San Francisco claimed.

Los Angeles County and Stockton did not claim any costs under the adverse comment category of the parameters and guidelines. Los Angeles County officials indicated that, due to time constraints, they focused on the two largest areas of expense (interrogations and administrative appeals) and chose not to pursue reimbursement under the other categories. However, county officials also said in July 2003 that they might revise the county’s claim to include such costs in the future. After reconsidering the parameters and guidelines, a Stockton official stated that Stockton believes the parameters and guidelines allow reimbursement for all activities related to preparation, review, notification, presentation, and review of the response for an adverse comment, and as of July 2003, Stockton was reviewing its records to determine actual costs.

#### **Reimbursable Administrative Activities**

- Developing or updating internal policies, procedures, manuals, or other materials pertaining to the conduct of the mandated activities.
- Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
- Updating the status of peace officer rights mandate cases.

#### **Differing Interpretations of Mandated Administrative Activities Led to Questionable Claims**

The administrative activities category of expense is the clearest example of differing interpretations of the parameters and guidelines, even between divisions within the same local entity. The parameters and guidelines provide reimbursement for only three administrative activities. The local entity that took the broadest interpretation of the parameters and guidelines with regard to

***With regard to administrative activities, the city of Los Angeles took the broadest interpretation of the parameters and guidelines, claiming \$2.2 million in costs, at least \$1.4 million of which we question.***

administrative activities, the city of Los Angeles, claimed \$2.2 million in administrative activity costs, at least \$1.4 million of which we question. San Francisco's management control division claimed a total of \$14,000 for time spent developing or updating internal policies, procedures, manuals, or other material relating to the rights of public safety officers. This activity is expressly allowed as a reimbursable activity in the parameters and guidelines, and the amount of time claimed does not appear to be unreasonable. However, as we describe in more detail later, its Office of Citizen Complaints claimed a total of \$335,000 in administrative activity costs, at least \$224,000 of which we question. Stockton claimed an immaterial amount for a half day's worth of training in peace officer rights for its staff, which is also expressly allowed as a reimbursable activity. Los Angeles County did not claim any administrative activity costs, citing the same reasoning with which it handled adverse comment expenses. It may revise its claim to include costs for administrative activity expenses, which it believed were small compared with the costs it already has claimed. Overall, we question a total of \$1.6 million of the \$2.5 million in administrative activity costs claimed.

The city of Los Angeles did not claim any charges for training related to the peace officer rights mandate or the development of policies and procedures; therefore, all of the \$2.2 million it claimed for administrative activity costs was claimed for updating the status of peace officer rights mandate cases. Only those activities described as being performed by its clerical staff seem to correspond even loosely to updating the status of cases, yet the city of Los Angeles also charged time for such activities as a lieutenant logging in and assigning cases. Therefore, we question all time charged under administrative activities except for that charged by the clerical staff. The city of Los Angeles contends that all costs associated with all administrative activities for each claim, as well as maintaining the entire system that is required by the peace officer rights law, are reimbursable. The city further states that the administrative activities section of the parameters and guidelines includes whatever administrative activities are necessary to implement and carry out the policies and procedures pertaining to the conduct of the mandated activities.

However, the Commission's staff analysis of the proposed parameters and guidelines indicated that staff altered the proposed language regarding "maintenance of the systems to conduct the mandated activities" to "updating the status

report of [peace officer rights mandate] cases," believing that the original activity proposed was too ambiguous and broad. In particular, staff stated in their analysis that activities such as conducting investigations, issuing disciplinary actions, and maintaining files for cases are not reimbursable. When we requested further clarification, Commission staff stated that "update the status report of the [peace officer rights mandate] cases" was intended to provide reimbursement to track the procedural status of reimbursable cases so local entities could ensure compliance with the procedural requirements imposed by the peace officer rights law.

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*The staff analysis of the proposed parameters and guidelines indicates that activities such as maintaining files are not reimbursable, yet San Francisco claimed reimbursement for such costs.*

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San Francisco's Citizen Complaints claimed \$335,000 in administrative activity costs, at least \$224,000 of which we question. We do not question activities claimed for development and implementation of policies and procedures or updating the status of peace officer rights mandate cases. However, we do question activities claimed for preparing and maintaining records. Citizen Complaints' staff state that the preparation and maintenance of records serve to update the status of peace officer rights cases. However, as noted previously, the staff analysis of the proposed parameters and guidelines indicates that activities such as conducting investigations, issuing disciplinary actions, and maintaining files are not reimbursable.

Although none of the four local entities we reviewed mentioned this, one omission in the Commission's parameters and guidelines should be noted. The proposed parameters and guidelines as revised and accepted by the Commission provide reimbursement for updating the status report of peace officer rights mandate cases. However, the adopted parameters and guidelines provide reimbursement for updating the status of peace officer rights mandate cases. When we asked Commission staff about the absence of the word "report," they stated that it was omitted inadvertently. They further stated that the Commission could not correct this error on its own without a state or local entity filing a request. It seems reasonable that inclusion of the word "report" may provide a stronger connotation that the activities intended are limited in nature and that not all administrative activities should be considered reimbursable.

### Reimbursable Administrative Appeal Activities

Administrative appeals are reimbursable for cases involving the following disciplinary actions and classifications of employees as of January 1, 1999:

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by the chief of police, whose liberty interest is not affected.
- Transfer of permanent employees for purposes of punishment.
- Denial of promotion for permanent employees for reasons other than merit.
- Other actions against permanent employees or the chief of police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

### Local Entities Also Overstated Administrative Appeal Costs

Three of the four entities claimed administrative appeal costs. We question the entire \$1.6 million they claimed because they claimed reimbursement for all administrative appeals without consideration of the employee's classification or the disciplinary action imposed. The parameters and guidelines provide for reimbursement for administrative appeals under very limited circumstances.<sup>2</sup> In the Appendix, we present some of the analysis included in the Commission's statement of decision for the peace officer rights mandate that clarifies the types of employees and disciplinary actions for which administrative appeals are reimbursable.

We question the entire \$1.3 million Los Angeles County claimed in administrative appeal charges because the county claimed costs for administrative appeals related to disciplinary actions that are not reimbursable under the parameters and guidelines. The parameters and guidelines do not provide reimbursement for administrative appeals for disciplinary actions such as dismissal, suspension, demotion, salary reduction, or written reprimand unless they are received by a chief of police whose liberty interest is not affected.<sup>3</sup>

Los Angeles County staff later asserted that up to 25 percent of the administrative appeals its in-house staff work on are reimbursable because they relate to transfer, denial of promotion, or other actions causing harm to permanent employees. However, it has not developed the data necessary to support this estimate. In addition, Los Angeles County claimed time for writing and reviewing charges before an appeal had been requested. The parameters and guidelines do not provide reimbursement if this occurs before the subject requests an appeal. Los Angeles County staff contend that writing and

<sup>2</sup> For the period from July 1994 through December 1998, the parameters and guidelines allowed reimbursement of administrative appeal activities for a broader group of employees. However, because of a change in the law, effective January 1, 1999, the parameters and guidelines further limited the classifications of employees, as shown in the text box.

<sup>3</sup> A liberty interest in employment arises when a government charge may seriously damage one's reputation to the extent that it forecloses the employee's freedom to pursue other employment opportunities.



review of charges is a necessary component of the appeals process because it provides peace officers who dispute decisions with an opportunity for appeal. However, Commission staff confirmed our understanding that activities occurring before the officer requests an administrative appeal are not reimbursable. Los Angeles County also claimed reimbursement for costs it incurred by contracting with attorneys to defend the county in Superior Court. These costs are not reimbursable, according to the staff analysis of the proposed parameters and guidelines.

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*After we presented our findings to city officials, Stockton agreed that its claim was significantly overstated.*

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We also question Stockton's claim of \$235,000 for administrative appeal costs. Stockton's consultant determined administrative appeal costs by calculating time spent investigating and processing difficult or complex personnel complaint cases rather than limiting the costs claimed to those provided for in the parameters and guidelines. After we presented our findings to city officials, Stockton agreed that its claim was significantly overstated.

In addition, we question San Francisco's entire claim of \$104,000 in administrative appeal costs because it claimed reimbursement for all the work it performed under this category without distinguishing between types of administrative appeals that are reimbursable under the peace officer rights mandate and those that are not. Although San Francisco later asserted that 83 percent of its sustained cases involve disciplinary actions that are reimbursable and provided us some additional data to evaluate, it did not use the data to determine the costs it claimed. In addition, the new data did not indicate which staff worked on the appeals or how much time they spent.

The city of Los Angeles did not seek reimbursement of any administrative appeals costs. Staff cited the complexity of the city's administrative appeals system, the limited scope of the appeals activities and cases eligible for state reimbursement, and the difficulty in documenting the eligible costs in accordance with the State's guidelines as reasons for not seeking reimbursement.

#### **THE COMMISSION'S ANIMAL ADOPTION GUIDANCE DOES NOT ADEQUATELY REQUIRE CLAIMANTS TO ISOLATE THE REIMBURSABLE PORTION OF ACQUIRING SPACE**

Although the Commission's guidance related to the animal adoption mandate will, for the most part, instruct a claimant on how to isolate those portions of costs related to the mandate, the

Commission could have devised a better formula for determining the reimbursable amount of the costs of new facilities. The current formula does not adequately isolate how much of a claimant's construction costs relate to the increased holding period as opposed to other causes, such as premandate animal shelter overcrowding or anticipated animal population growth.

The Commission found that, because holding animals for longer periods may increase the daily number of animals housed in a shelter, the increased holding period imposed by the animal adoption mandate could create a need for increased shelter space. Accordingly, the parameters and guidelines allow local entities to claim reimbursement for costs associated with increasing shelter space to comply with the mandate. Costs claimed for acquiring or renovating shelter facilities for fiscal years 1998–99 through 2001–02 totaled \$10.7 million, about 18 percent of all mandate costs. For the animal adoption mandate, we reviewed claims submitted by the cities of Los Angeles and Stockton, whose peace officer rights claims we also reviewed. Additionally, we reviewed claims submitted by San Diego County and San Jose. Stockton and San Jose claimed a total of \$1.6 million for facilities in fiscal year 2001–02. San Diego County and the city of Los Angeles claimed no costs for facilities in that period.

Stockton and San Jose appropriately used the formula provided by the Commission's guidance, which instructs claimants to prorate their construction costs by the number of eligible animals housed during the year divided by the total number of animals housed in the facility. Eligible animals are stray or abandoned (stray) animals eventually euthanized or that die during the increased holding period. The formula seems appropriate to the extent that a local entity claims only the extra space it needs to comply with the mandate. However, a local entity also might be adding space to deal with increases in animal populations due to growth in the community. In such a case, construction costs would be greater than necessary to comply with the mandate. The formula does not take this scenario into account, so local entities could be claiming more costs than the Commission intended. For example, if a locality with 5,000 eligible animals and 20,000 total animals constructed a \$1 million facility with 50 dog runs, the reimbursable amount would be \$250,000 ( $\$1,000,000 \times 5,000 \div 20,000$ ) under the current formula. If that same locality decided to add 25 additional dog runs to

#### Current Acquiring Space Formula

$$a = b \times c$$

- (a) Reimbursable amount
- (b) Total construction costs
- (c) Ratio of eligible animals to total animals

account for projected animal population growth and the total construction costs consequently rose to \$1.5 million, the reimbursable amount would be \$375,000 ( $\$1,500,000 \times 5,000 \div 20,000$ ). The current formula has no way of taking out the additional \$125,000 that relates to planned population growth.

Although both entities appropriately used the current formula to prorate their construction costs, San Jose apparently constructed a facility larger than what the mandate would have required. It explained that the size of its new facility provides additional capacity for potential population growth and capacity to contract with a limited number of smaller cities. Therefore, the costs claimed by San Jose likely are higher than needed to comply with the mandate.

### **IN VARYING DEGREES, CLAIMANTS UNDER BOTH MANDATES LACKED ADEQUATE SUPPORT FOR THEIR COSTS AND INACCURATELY CALCULATED CLAIMED COSTS**

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***We found that \$18.5 million of the \$19.1 million the four local entities we reviewed claimed in direct costs under the peace officer rights mandate lacked adequate support.***

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Claims submitted for both mandates lacked adequate support and reflected calculation errors. Although claims under both mandates lacked adequate support, the problems were much more severe for the peace officer rights claims. In particular, none of the four local entities we reviewed could adequately support the amount of time they indicated was spent on reimbursable activities. We found that \$18.5 million of the \$19.1 million in direct costs these local entities claimed lacked adequate support. As discussed previously, we also questioned a significant portion of the claims because we believe that many of the activities listed are not reimbursable because of their nature. The costs we question because of inadequate support overlap with those we question because of the nature of the activity, so they cannot be combined with the amounts we questioned earlier to determine the overall effect.

Under the animal adoption mandate, time spent on reimbursable activities was generally not a significant driver of claimed costs. However, we did find some time-related activities, as well as other direct costs, that were not supported adequately. In total, \$979,000 of the \$5.4 million in animal adoption claims we audited lacked adequate support.

***Under the animal adoption mandate, each claimant had errors that potentially overstated its claim; however, in some areas the local entities could have claimed higher amounts.***

Claimants also erred in determining their reimbursable costs. Although we saw mistakes that led to an understatement of some claimed costs, most mistakes tended to overstate claimed costs. Under the peace officer rights mandate, two of the four local entities made errors totaling \$377,000 in their fiscal year 2001–02 claims. Although we generally focused our review on fiscal year 2001–02 claims, we found that one entity also made a significant error in its fiscal year 2000–01 claim, resulting in an overstatement of \$3.7 million. The two errors related to the fiscal year 2001–02 claims could overlap the earlier costs that lacked adequate support, so the \$377,000 cannot be combined with the \$18.5 million in costs that lacked adequate support, as described earlier, to determine the overall effect. Under the animal adoption mandate, each claimant had errors that potentially overstated its claim. However, we also found areas in which some of the local entities could have claimed higher amounts. In fact, two of the four claims we audited would be higher if the overstating errors were corrected and the claimant requested reimbursement for all that was allowable. The net result of correcting errors and claiming full amounts for all four local entities is a potential overstatement of \$675,000, which is 13 percent of the \$5.4 million we audited.

#### **None of the Peace Officer Rights Claimants Could Adequately Support the Amount of Time Spent on Reimbursable Activities**

As shown in Table 3 on the following page, we question \$18.5 million of the \$19.1 million in direct costs the four local entities we reviewed claimed in fiscal year 2001–02 because the charges depend on unsupported information regarding time spent on reimbursable activities.

Even though the parameters and guidelines require it, none of the four local entities tracked the actual time devoted to each reimbursable activity by each employee. We acknowledge that this would have been challenging in preparing the initial claims because the Commission found that only selected activities in an entity's disciplinary process are reimbursable, and claiming guidance was not developed until after the years related to the initial claims had passed. In accordance with the Controller's claiming instructions issued in October 2000, the initial claiming period for the peace officer rights mandate included costs for fiscal years 1994–95 through 1999–2000. Therefore, for the initial claiming period, local entities would have had to gather historical data for six fiscal years. We also acknowledge

TABLE 3

## Unsupported Costs in Fiscal Year 2001-02 Peace Officer Rights Mandate Claims

Local Entities					
Cost Category	Los Angeles County	City of Los Angeles	San Francisco	City of Stockton	Totals
Direct costs claimed	\$3,920,000	\$8,977,000	\$5,799,000	\$388,000	\$19,084,000
Unsupported costs by category:					
Interrogations	2,561,000	3,814,000	3,501,000	152,000	10,028,000
Adverse comments	NA	3,001,000	1,845,000	NA	4,846,000
Administrative activities	NA	2,162,000	349,000	0	2,511,000
Administrative appeals	774,000	NA	104,000	235,000	1,113,000
Total unsupported costs	\$3,335,000	\$8,977,000	\$5,799,000	\$387,000	\$18,498,000
Percent unsupported	85.1%	100.0%	100.0%	99.7%	96.9%

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

\* Since we evaluated the local entities' direct cost claims against two separate criteria—support and eligibility—the costs we question in this table cannot be added to the costs we question in Table 2.

that tracking the actual amount of time spent by each employee on each reimbursable activity on an ongoing basis could be cumbersome and costly. Nevertheless, we anticipated that local entities would have performed a time study at some point after the claiming guidance was available to track the actual time spent on reimbursable activities and used this as an estimate for past and current claiming purposes.

In particular, if it is not practical to track actual efforts, we would expect local entities to document the methodology and results of time studies as part of the support for activities claimed whenever the determination of costs depends on a measure of staff time. Key elements of an adequate time study include having employees who are conducting the reimbursable activities track the actual time they spend when they are conducting each activity, recording the activities over a reasonable period of time, maintaining documentation that reflects the results, and periodically considering whether the results continue to be representative of current processes. However, instead of conducting such a time study, claimants based the amount of time they claimed on interviews and informal estimates developed after the related activities were performed.

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***The city of Los Angeles had no documentation to support that the time estimates it used reflected the actual experience of its employees.***

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For example, we question the entire \$9 million the city of Los Angeles claimed because there was not sufficient evidence supporting the amount of time spent. The city of Los Angeles estimated time using a spreadsheet of activities related to its disciplinary process for peace officers. Its staff stated that the time estimates were based on a review of cases processed in fiscal year 2000-01, but the city had no documentation to support that the time estimates it used reflected the actual experience of its employees. City staff further stated that, for fiscal year 2001-02, the city's internal affairs office reviewed the time estimates and concluded that they were on the conservative side and clearly understated the time in most cases. For each particular activity on the spreadsheet, the city specified the employee classification that typically performs the task and designated each activity as relating to one of the four reimbursable activity categories or as a nonreimbursable activity. The city of Los Angeles multiplied the estimated time spent per case on each activity it designated as reimbursable by the total number of cases processed during the year to determine the total number of hours claimed for each activity. However, the city of Los Angeles had no documentation regarding individual employees or actual time spent to support the estimates, so we could not determine whether the hours claimed were reasonable.

Similarly, we question the entire \$5.8 million San Francisco claimed. As described earlier, San Francisco's claim was developed primarily by gathering data from two groups within the city and county that used different methods for determining time spent on activities related to peace officer rights. Citizen Complaints developed its time estimates based on the amount of time commonly spent on various activities and on experiences in training new employees. In contrast, the police department essentially claimed reimbursement for the entire working year of 28 employees, five of whom were included twice in the claim. It did not attempt to determine how much time was spent on specific reimbursable activities because it viewed all these employees' time as reimbursable. However, the claiming instructions, issued before local entities are required to submit their claims, explicitly state that costs for salaries are to be supported by descriptions of the reimbursable activities performed and the actual time devoted to each reimbursable activity by each employee. The claiming instructions further state that all costs claimed shall be traceable to source documents, such as employee time records, that show evidence of the validity of such costs and their relationship

to the state-mandated program. In addition, neither method San Francisco used to support the number of hours claimed constituted an acceptable time study.

We also question \$3.3 million of the \$3.9 million Los Angeles County claimed because the costs were not supported sufficiently. Under the interrogations category, we question \$2.6 million of the \$2.7 million claimed because the county's methods lacked adequate support for employee time. In particular, Los Angeles County claimed \$1.7 million of the \$2.7 million for the efforts of the investigators working in its internal affairs bureau and based its estimate of time on a ratio of cases involving peace officers to total cases with no support for the time spent on each case. It defended its time estimates by stating that no time standard for investigative activities exists and the parameters and guidelines do not limit the amount of time that can be spent on such activities. However, as noted earlier, the claiming instructions state that only actual time spent on reimbursable activities may be claimed. In addition, the county claimed \$865,000 for the investigative efforts of staff in its stations or units based on an average number of hours per peace officer case. Although the county asserted that the average was determined based on a "time study of 19 cases," the average actually was based on interviews. According to county staff, one employee developed the averages based on interviews with other employees who worked on the 19 cases. There were no records to show whether the employees who performed the work had tracked their actual efforts. Under the administrative appeals category, we question \$774,000 of the \$1.3 million Los Angeles County claimed because the amount of staff time charged was based only on the proportion of peace officer cases to total cases, with no support for the time spent on each case, similar to the method described earlier for the investigators in the internal affairs bureau.

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***Under the administrative appeals category, we question \$774,000 of the \$1.3 million Los Angeles County claimed because the amount of staff time charged was based only on the proportion of peace officer cases to total cases, with no support for the time spent on each case.***

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Finally, for reasons similar to those already described, we question \$387,000 of the \$388,000 Stockton claimed, which represents the total costs it claimed under the interrogations and administrative appeals categories. In contrast to other local entities, Stockton acknowledged the weakness in its support and plans to reassess its claim, including time estimates, before submitting an amended one.

We recognize that there may be instances when it may be impractical to maintain source documents with the level of detail needed to identify actual costs. In such cases, a properly

prepared and documented time study may be a reasonable substitute for actual time sheets. Despite some assertions to the contrary, none of the four local entities we reviewed used an adequate time study to support their estimates of time spent for any activity they claimed. The Controller is working with local entities to develop guidance regarding the appropriate use and conduct of time studies. Although we think this type of guidance would be helpful, the Controller had not provided such guidance to local entities as of the issuance of this report.

### **Animal Adoption Claimants Did Not Always Document Their Costs Sufficiently**

Similar to the peace officer rights mandate but to a lesser extent, the animal adoption claimants we reviewed did not always have sufficient documentation for the costs they claimed. Table 4 on the following page shows that in total, the claimants could not adequately support \$979,000 of the \$5.4 million they claimed. Although time spent on reimbursable activities generally was not a significant driver of claimed costs under this mandate, entities did not always have adequate support for their estimates of time spent on reimbursable activities. The Controller's animal adoption claiming instructions generally require claimants to support time estimates with documentation, such as employee time records that identify the actual time spent on mandated activities. As in the peace officer rights discussion, we acknowledge that tracking actual time for the initial animal adoption claims would have been challenging, but we anticipated local entities would base their time estimates on a documented time study. In actuality, claimants generally based time estimates on employee interviews rather than documented time studies. In some cases, claimants also did not have sufficient documentation to support other direct costs.

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*The animal adoption claimants we reviewed generally based time estimates on employee interviews rather than documented time studies.*

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For example, as shown in Table 4, the city of Los Angeles could not adequately support \$476,000 of the \$2.5 million it claimed. To calculate the \$365,000 it claimed for veterinary care, the city multiplied the cost for various veterinary treatments by the number of times it administered them. However, city staff could not provide documents that adequately supported the cost of the various treatments. Also, the city of Los Angeles claimed \$111,000 in nonmedical record costs but could not provide supporting documentation for its estimate of how long it takes to maintain a nonmedical record, which city staff estimated at 20 minutes per record. Neither San Diego County



TABLE 4

### Unsupported Costs in Fiscal Year 2001–02 Animal Adoption Mandate Claims

Cost Category	Local Entities				Totals
	City of Los Angeles	San Diego County*	City of San Jose	City of Stockton	
Total costs claimed	\$2,473,000	\$400,000	\$900,000	\$1,587,000	\$5,360,000
Unupported costs by category:					
Care of dogs and cats	0	0	123,000	0	123,000
Lost and found lists	0	54,000	NA	0	54,000
Nonmedical records	111,000	117,000	NA	35,000	263,000
Veterinary care	365,000	0	174,000	0	539,000
Total unsupported costs	\$ 476,000	\$171,000	\$297,000	\$ 35,000	\$ 979,000

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

\* San Diego County has contracts to shelter the animals of multiple cities within the county. Each city shares in the shelter costs incurred by San Diego County. The amounts in this column include costs for all the contract cities as well as the county.

nor Stockton, which respectively claimed \$117,000 and \$35,000 in nonmedical record costs, had supporting documentation for their nonmedical record time estimates. However, their estimates were much lower than the 20 minutes estimated by the city of Los Angeles, ranging from six to 12 minutes for San Diego County and five minutes for Stockton. San Diego County also did not have adequate support for the percentage of time its call center employees dealt with lost and found list issues as opposed to requests from the public for other information. The employee who prepared the claim obtained a signed memo from the supervisor of the call center for the percentage estimate, but the estimate was not based on a documented time study. Because this percentage is a key figure in San Diego County's calculation of lost and found list costs, we question the \$54,000 claimed.

In another example of insufficient documentation, San Jose had a contract with a local humane society for the housing and care of its animals. Although San Jose claimed costs it incurred under the contract, some of the services the humane society provided were not reimbursable, and the contract terms were not detailed sufficiently to identify the cost of the nonreimbursable activities. For example, San Jose claimed \$174,000 in reimbursement for a proration of the contract cost of veterinary care, which included providing emergency

***San Jose's contract with a local humane society for the housing and care of its animals did not adequately distinguish between reimbursable and nonreimbursable activities.***

treatment to injured animals. However, the parameters and guidelines for the mandate specifically exclude emergency treatment from reimbursement, and San Jose could not identify the portion of its contract veterinary costs associated with emergency treatment. In addition, San Jose claimed \$123,000 for a proration of its shelter contract costs under the care of dogs and cats category. However, its shelter contract includes costs associated with the euthanization of animals, which the parameters and guidelines specifically exclude.

Although some components of the claim might have been overstated by including nonreimbursable activities, San Jose likely understated others because of its inability to isolate the costs from the overall contract. For example, it did not claim any holding period or nonmedical record costs because they could not be isolated from overall contract costs. As a result, we could not determine whether the total costs claimed were reasonable.

#### **Local Entities Made Errors in Calculating Claimed Costs Under Both Mandates**

Claimants also calculated reimbursable costs incorrectly. In calculating the effect of these errors, we sometimes employed estimation techniques such as averaging. In such cases, we indicate that the amount calculated is an estimate. For peace officer rights claims, we noted two errors totaling \$377,000 related to fiscal year 2001–02 claims. These errors involved incorrect calculations of salaries and benefits and inclusion of costs for disciplinary cases involving civilian employees in calculations that should relate only to peace officers. One claimant also overstated the indirect costs in its fiscal year 2000–01 claim by \$3.7 million. In addition, we noted multiple errors during our review of animal adoption claims, including use of incorrect animal census data in various calculations. We also noted a few mistakes that led to an understatement of certain costs on the animal adoption claims, but most mistakes we found resulted in an overstatement of claimed costs. The net effect of all the errors represented an overstatement of \$675,000 for the four animal adoption claims we reviewed.

The city of Los Angeles made two of the three calculation errors we noted in our review of peace officer rights claims. The city overstated indirect costs in its fiscal year 2000–01 claim by \$3.7 million due to various calculation errors. Although we generally focused on fiscal year 2001–02 claims, we reviewed the city of Los Angeles' indirect costs for fiscal year 2000–01

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***The city of Los Angeles overstated indirect costs on its peace officer rights mandate claim for fiscal year 2000–01 by \$3.7 million due to various calculation errors.***

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because the indirect cost rate of 78.51 percent it used in its claim for that year was so high compared with the rates, ranging from 13 percent to 25 percent, used in other years.

Two factors contributed to the overstatement. First, the city used the wrong indirect cost rate. When benefits are claimed as a direct cost, as they were in fiscal year 2000–01, the benefit rate should not be included in the indirect cost rate because it results in a double counting of benefit costs. The indirect cost rate for the city of Los Angeles should have been 42.13 percent in fiscal year 2000–01. However, the city mistakenly included the fringe benefit rate of 36.38 percent as well, leading to the 78.51 percent indirect cost rate that it used in its fiscal year 2000–01 claim. Second, when benefits are claimed as a direct cost, which the city did in fiscal year 2000–01, total indirect costs should be calculated by multiplying the indirect cost rate by salaries only. However, the city added benefits to salaries and multiplied the resulting total by the indirect cost rate. As a result, the city claimed \$6.1 million for indirect costs in its fiscal year 2000–01 claim. This is \$3.7 million more than it should have claimed. City staff agree they made an error and plan to submit an amended claim.

The city of Los Angeles also made an error in its fiscal year 2001–02 claim that we estimate resulted in an overstatement of \$354,000. It included costs related to disciplinary actions against civilian employees. However, procedural protections for civilian employees facing disciplinary action are not reimbursable under the peace officer rights mandate. Because the city's data on new cases do not include information regarding whether the subject of the investigation is a peace officer or a civilian employee, we based our estimate on data regarding closed cases. The city of Los Angeles agrees that it made an error and plans to submit an amended claim.

The third error we noted relates to San Francisco. Its Office of Citizen Complaints (Citizen Complaints) made errors in calculating salaries that led to a net overstatement of \$23,000 in the costs claimed for salaries and benefits. Specifically, it made several errors when computing various averages to develop the salary rates used in the claim.

The two errors related to fiscal year 2001–02 claims overlap the costs we questioned earlier. Therefore, these errors should not be added to the costs we previously questioned based on the nature of activities claimed or on the lack of supporting documentation.

We found a number of errors in animal adoption claims that resulted in an overstatement for a particular component of a local entity's claim. However, we also found areas in which local entities did not claim as much as they might have if they had taken full advantage of what the parameters and guidelines allow. Table 5 summarizes the errors we found, including the areas in which claimants could have claimed reimbursement for more costs than they actually did claim. As shown in Table 5, the net result of these errors ranged from a \$797,000 overstatement by Stockton to an understatement of \$122,000 by San Diego County.

**TABLE 5**

**Errors Found in Fiscal Year 2001–02 Animal Adoption Mandate Claims**

Claim Category	Local Entities				Totals
	City of Los Angeles	San Diego County*	City of San Jose	City of Stockton	
Total costs claimed	\$2,473,000	\$ 400,000	\$ 900,000	\$1,587,000	\$5,360,000
<b>Errors by category:</b>					
Acquiring space/facilities	NA	NA	33,000	392,000	425,000
Care of dogs and cats	324,000	0	31,000†	340,000	695,000
Veterinary care	0	0	(37,000)†	0	(37,000)
Holding period	127,000	(143,000)	NA	45,000	29,000
Indirect costs	(361,000)	21,000	NA	20,000	(320,000)
Offsetting savings	NA	0	(117,000)	NA	(117,000)
Net overstatement (understatement)	\$ 90,000	\$(122,000)	\$ (90,000)	\$ 797,000	\$ 675,000

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

\* San Diego County has contracts to shelter the animals of multiple cities within the county. Each city shares in the shelter costs incurred by San Diego County. The amounts in this column include costs for all the contract cities as well as the county.

† Because we also question the entire amount claimed in this category for lack of support, the effect of this error should not be combined with the amount shown in Table 4.

The errors we found under the first three categories in Table 5, representing a net of \$1,083,000, all relate to compiling or applying animal census data. Stockton included in its count of eligible animals those turned in by their owners and those euthanized for humane reasons upon arrival at the shelter. The parameters and guidelines define both types of animals as ineligible. We estimate that this mistake caused Stockton to overstate the acquiring space component of its animal adoption claim by roughly \$392,000, or 45 percent of the costs it claimed

for that component. The reason for the mistake was an apparent lack of understanding about which animals were eligible for reimbursement among Stockton's animal control personnel who gathered information for the claim.

In contrast, Stockton animal control personnel correctly provided an estimate of the annual census of dogs and cats housed in its shelter, but its consultant mistakenly used the number of animals coming into the shelter (intake) in preparing the claim. The intake amount is a much smaller number; for example, one dog held five days would count as one dog in the intake figure but would count as five animal days in the annual census number. By using the intake figure rather than the annual census, Stockton overstated its cost per dog

or cat. This caused significant overstatement of the care of dogs and cats component of the claim. Stockton's consultant also miscalculated the number of reimbursable days, which caused an understatement of the care of dogs and cats component of the claim. We estimate that the net effect of these errors is an overstatement of \$340,000.

**Formula Used to Determine the  
Claimable Amount for Care of  
Dogs and Cats**

$$a = b \times c \times d$$

- (a) Claimable amount
- (b) Daily cost per dog or cat (the ratio of total care of dogs and cats to annual census of dogs and cats)
- (c) Eligible dogs and cats
- (d) Number of reimbursable days

The city of Los Angeles understated its annual census of dogs and cats by including only strays in the figure, instead of including *all* dogs and cats. This resulted in an overstatement of at least \$324,000 in the care of dogs and cats component of its claim. However, the city made this mistake because it used a definition from an earlier section of the parameters and guidelines that limited

the census number to strays. Although the parameters and guidelines could have been clearer by including a separate definition in the care of dogs and cats section, we believe the context makes it clear that the total costs for *all* dogs and cats must be divided by a census figure including *all* dogs and cats to compute an accurate daily cost per dog or cat. As the formula shows, including only strays in the census calculation would lead to an inflated cost per animal and an overstatement on the claim.

San Jose had several errors in its calculations, primarily related to the number of eligible animals, the number of total animals, and its annual census. These errors led to an estimated overstatement of \$31,000 in the costs for the care of dogs and

***We estimate that the combination of three errors in calculating holding period costs led to a net overstatement of \$127,000 on the animal adoption claim submitted by the city of Los Angeles.***

cats, an estimated overstatement of \$33,000 in the costs for acquiring space, and an estimated understatement of \$37,000 in the costs for veterinary care. The combination of these three errors resulted in a net overstatement of about \$27,000.

Another common mistake related to the claiming of holding period costs. The parameters and guidelines allow reimbursement under this category for the costs associated with holding shelters open to the public on one weekend day, one weekday evening, or, under certain circumstances, for costs incurred in establishing an after-hours redemption process. The city of Los Angeles claimed \$805,000 for holding its shelters open on Saturdays. However, we estimate that it overstated these costs by a net total of \$127,000. Specifically, \$317,000 of the \$805,000 claimed under this category is not reimbursable because it relates to the labor costs of animal control officers. These officers performed field operation duties not specifically related to holding shelters open to the public; therefore, their labor costs should not be included in the claim. This overstatement error was offset by the fact that the city claimed reimbursement for the activities of 12 fewer animal care technicians than we estimated it was entitled to claim. In addition, in computing the salaries and benefits for the staff time claimed, the city of Los Angeles used a different measure for total annual work hours than the Controller's standard of 1,800 hours. These two conditions led to an estimated understatement of \$190,000.

Stockton also claimed holding period costs that should not have been included. Specifically, the number of employees working on Saturday as contained in Stockton's fiscal year 2001-02 employee schedule did not match what was claimed. Its claim calculations included costs for five employees; however, the schedule revealed that only three employees generally worked in the shelters on Saturday. Two of the five employees worked in the field. In addition, the claim included full eight-hour shifts for each employee, even though Stockton's shelter is open to the public for only four hours on Saturdays. The rest of the employees' time is devoted to feeding animals, cleaning cages, and performing other duties related to the care of animals. These activities are not reimbursable as holding period costs under the animal adoption mandate, as they would have to be performed regardless of whether or not the shelter was open to the public. We estimate that the combination of these errors caused Stockton's claim to be overstated by \$45,000.